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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–058–3]

Flag Smut; Importation of Wheat and Related Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding the importation of wheat and related articles by removing the prohibitions related to flag smut. Based on a number of considerations, we have concluded that U.S. wheat will not be at risk if those prohibitions are removed. We will, however, continue to prohibit the importation of wheat and related articles from flag smut-affected countries until a risk evaluation can be completed to ensure that those articles do not introduce other plant pests. This action removes flag smut-related prohibitions that no longer appear to be necessary while continuing to provide protection against other potential pests or diseases of wheat.

DATES: *Effective Date:* December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Wager-Page, Branch Chief, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737–1232; (301) 734–8453.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Wheat Diseases'' (7 CFR 319.59 through 319.59–4, referred to below as the regulations) prohibit or restrict the importation of wheat and related articles into the United States from certain parts of the world to prevent the introduction of foreign strains of flag smut and Karnal bunt.

On May 20, 2005, we published in the **Federal Register** (70 FR 29212–29214, Docket No. 02–058–2) a proposal to amend the regulations by removing the prohibitions related to flag smut. Based on a number of considerations, we have concluded that U.S. wheat would not be at risk if those prohibitions were removed. We proposed, however, to continue to prohibit the importation of wheat and related articles from flag smut-affected countries listed in § 319.59–3(b) [1] until a risk evaluation can be completed to ensure that wheat and related articles from those countries do not introduce other plant pests. The effect of our proposed changes would be to remove flag smut-related prohibitions that no longer appear to be necessary while continuing to provide protection against other potential pests or diseases of wheat.

We solicited comments concerning our proposal for 60 days ending July 19, 2005. We received two comments by that date. They were from a representative of a foreign national plant protection organization and a group of domestic wheat industry organizations. One commenter supported the proposed rule, and the other used her comment to provide information indicating that her country was free of flag smut and, therefore, should be removed from the list of countries in § 319.59–3(b).

The regulations in § 319.59–3, as amended by this final rule, provide that the national plant protection organization of any country or locality listed in paragraph (b) of that section may contact the Animal and Plant Health Inspection Service (APHIS) to initiate the preparation of an evaluation of the potential pest risks associated with wheat and related articles in that country or locality. Such an evaluation is necessary because our previous flag-smut-based prohibitions had precluded the entry into the United States of wheat and related articles from affected countries, so there has not been a need or opportunity for APHIS to assess the phytosanitary situation in those countries to determine whether or not there may be other pests of wheat and related articles present there.

We will consider the information submitted by the commenter regarding the freedom of her country from flag smut to be the initiation of a request for market access by her country. As noted previously, § 319.59–3 calls for the preparation of a risk evaluation in this situation and we will work with the commenter with regard to that request. Once an official evaluation is completed, we will, if supported by the results of that evaluation, take action to amend the regulations to remove the commenter's country from the list in § 319.59–3(b).

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the regulations regarding the importation of wheat and related articles by removing the prohibitions related to flag smut. Based on a number of considerations, we have concluded that U.S. wheat will not be at risk if those prohibitions are removed. We will, however, continue to prohibit the importation of wheat and related articles from flag smut-affected countries until a risk evaluation can be completed to ensure that those articles do not introduce other plant pests. This action removes flag smut-related prohibitions that no longer appear to be necessary while continuing to provide protection against other potential pests or diseases of wheat.

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions and to use flexibility to provide regulatory relief when regulations create economic disparities between different-sized entities. According to the Small Business Administration's (SBA's) Office of Advocacy, regulations create

[1] The listed countries and localities are: Afghanistan, Algeria, Armenia, Australia, Azerbaijan, Bangladesh, Belarus, Bulgaria, Chile, China, Cyprus, Egypt, Estonia, Falkland Islands, Georgia, Greece, Guatemala, Hungary, India, Iran, Iraq, Israel, Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Libya, Lithuania, Moldova, Morocco, Nepal, North Korea, Oman, Pakistan, Portugal, Romania, Russia, Spain, Tajikistan, Tanzania, Tunisia, Turkey, Turkmenistan, South Africa, South Korea, Ukraine, Uzbekistan, and Venezuela.

economic disparities based on size when they have a significant impact on a substantial number of small entities.

We expect that this rule will affect domestic producers and processors of wheat. It is likely that the entities affected will be small according to SBA guidelines. As detailed below, information available to APHIS indicates that the effects on these small entities will not be significant.

Affected U.S. wheat producers and processors are expected to be small based on the 2002 Census of Agriculture data. According to the census, there were 169,528 farms in the United States that sold wheat, collectively valued at $5.64 billion. SBA guidelines for entities in Wheat Farming and Wheat Farming, Field, and Seed Production (North American Industry Classification System [NAICS] code 111140) classify producers in these farm categories as small entities if their total annual sales are no more than $750,000. APHIS does not have information on the size distribution of domestic wheat producers, but according to 2002 Census data, there were a total of 2,128,892 farms in the United States. Of this number, approximately 97 percent had total annual sales of less than $500,000 in 2002, which is well below the SBA's small entity threshold for commodity farms. This indicates that the majority of farms are considered small by SBA standards, and it is reasonable to assume that most of the 169,528 wheat farms that could be affected by the rule would also qualify as small.

Additionally, there were 157 wheat milling establishments reported in the census. Of these entities, 153 were wheat flour (except flour mixes) milling establishments (NAICS code 3112111), with a total of 6,720 employees, and 4 were wheat products (except flour) milling establishments (NAICS code 3112114), with a total of 288 employees. In the case of these milling establishments, those entities with fewer than 500 employees are considered small by SBA standards. Therefore, all 157 milling establishments are considered to be small entities.

The United States is the world's leading wheat exporter. The average annual value of exported U.S. wheat over the last 5 years is $4.4 billion. The volume of wheat exports from the United States has, on average, been 14 times greater than import volume.

Annual costs and benefits associated with removing the import prohibitions associated with flag smut depend upon the level of U.S. domestic wheat production as well as on import levels. The lower the import level when compared to the level of domestic availability after export, the lower the potential impact of this proposed action on the economic welfare of domestic wheat importers and producers.

Nevertheless, the economic impact on U.S. domestic producers and processors of wheat is expected to be negligible since the percentage of imported wheat has been relatively low (6 percent of the domestic supply) when compared with the domestic supply levels overall. In particular, domestic wheat producers should not face competition from foreign producers given the small percentage of imported wheat in the domestic supply.

Given the relatively small amount of wheat in the domestic supply when compared to U.S. wheat production and the size of the domestic supply overall this change will not have any measurable economic effect on either domestic producers or processors of wheat.

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

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

■ Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.59–1 [Amended]

■ 2. In § 319.59–1, the definition for *foreign strains of flag smut* is removed.

■ 3. In § 319.59–2, the introductory text of paragraph (b) is revised to read as follows and paragraph (b)(3) is amended by removing the words ''(including foreign strains of flag smut)''.

§ 319.59–2 General import prohibitions; exceptions.

* * * * *

(b) *Triticum* spp. plants, articles listed in § 319.59–3 as prohibited importation pending risk evaluation, and articles regulated for Karnal bunt in § 319.59–4(a) may be imported by the U.S. Department of Agriculture for experimental or scientific purposes if:

* * * * *

■ 4. In § 319.59–3, the section heading and the introductory text of the section are revised to read as follows:

§ 319.59–3 Articles prohibited importation pending risk evaluation.

The articles listed in paragraph (a) of this section from the countries and localities listed in paragraph (b) of this section are prohibited from being imported or offered for entry into the United States, except as provided in § 319.59–2(b), pending the completion of an evaluation by APHIS of the potential pest risks associated with the articles. The national plant protection organization of any listed country or locality may contact APHIS [1] to initiate the preparation of a risk evaluation. If supported by the results of the risk evaluation, APHIS will take action to remove that country or locality from the list in paragraph (b) of this section.

* * * * *

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

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–23329 Filed 11–25–05; 8:45 am]

BILLING CODE 3410–34–P

[1] Requests should be submitted in writing to Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737–1236.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, and 95

[Docket No. 03–080–8]

RIN 0579–AB97

Bovine Spongiform Encephalopathy; Minimal-Risk Regions and Importation of Commodities; Unsealing of Means of Conveyance and Transloading of Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: In a final rule published in the **Federal Register** on January 4, 2005, we amended the regulations regarding the importation of animals and animal products to establish a category of regions that present a minimal risk of introducing bovine spongiform encephalopathy into the United States via live ruminants and ruminant products and byproducts, and added Canada to this category. We also established conditions for the importation of certain live ruminants and ruminant products and byproducts from such regions. In this document, we are amending the regulations to broaden who is authorized to break seals on means of conveyances carrying certain ruminants of Canadian origin. Additionally, we are amending the regulations regarding the transiting through the United States of certain ruminant products from Canada to allow for direct transloading of the products from one means of conveyance to another in the United States under Federal supervision. These actions will contribute to the humane treatment of ruminants shipped to the United States from Canada and remove an impediment to international trade, without increasing the risk of the BSE disease agent entering the United States.

DATES: This interim rule is effective November 28, 2005. We will consider all comments that we receive on or before January 27, 2006.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2005–0003 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 03–080–8, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–080–8.

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: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: For information regarding ruminant products, contact Dr. Karen James-Preston, Director, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

For information concerning live ruminants, contact Lee Ann Thomas, Director, Technical Trade Services, Animals, Organisms and Vectors, and Select Agents, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

In a final rule published in the **Federal Register** on January 4, 2005 (70 FR 460–553, Docket No. 03–080–3), we amended the regulations in 9 CFR parts 93, 94, 95, and 96 regarding the importation of animals and animal products (referred to below as the regulations) to establish a category of regions that present a minimal risk of introducing bovine spongiform encephalopathy (BSE) into the United States via live ruminants and ruminant products and byproducts, to add Canada to this category, and to provide conditions for the importation of live ruminants and ruminant products and byproducts from Canada.

Following publication of the final rule, it came to our attention that certain provisions in the rule could create conditions that either are not conducive to the humane treatment of livestock or that unnecessarily hinder international trade. In this interim rule, we are amending the regulations to remedy these situations. We discuss below the changes we are making.

Breaking of Seals on Means of Conveyance at Feedlots and Slaughtering Establishments

The regulations in §§ 93.419, 93.420, and 93.436, which were established or amended by our January 2005 final rule, include requirements governing the importation of bovines, sheep, and goats from Canada, either for immediate slaughter in the United States or for movement to a feedlot or designated feedlot in the United States and then to slaughter.

Those importation requirements provide that bovines, sheep, and goats entering the United States from Canada must be transported to the United States in a means of conveyance that is sealed in Canada with seals of the Canadian Government. The final rule specified who in the United States was authorized to break the Canadian seals, as follows:

- Under §§ 93.419, 93.420, and 93.436, only Animal and Plant Health Inspection Service (APHIS) port veterinarians are authorized to break the seals at the port of entry.
- Under § 93.419(d)(4), the official seals on a means of conveyance used to transport sheep and goats from Canada to a designated feedlot in the United States must be broken at the feedlot only by an accredited veterinarian or a State or U.S. Department of Agriculture (USDA) representative or his or her designee. Similarly, under § 93.436(b)(7), the seals on a means of conveyance used to transport bovines from Canada or other minimal risk region to a U.S. feedlot must be broken only by an accredited veterinarian or a State or USDA representative or his or her designee.
- Under § 93.420(a), which deals with the importation of ruminants in general from Canada for immediate slaughter, the seals on a means of conveyance used to transport such ruminants to slaughter may be broken at a recognized slaughtering establishment only by an accredited veterinarian or a State or USDA representative or his or her designee. However, this provision is inconsistent with provisions in § 93.436(a)(4) that apply specifically to bovines, which state that seals on means of conveyance used to transport bovines from Canada or other minimal risk region to the United States for immediate slaughter must be broken at

the slaughtering establishment only by a USDA representative.

• Under §§ 93.419(d)(5) and 93.436(b)(10), the seals on a means of conveyance used to transport sheep, goats, and bovines from Canada from a U.S. feedlot to a recognized slaughtering establishment must be broken at the recognized slaughtering establishment only by a USDA representative.

Requiring that a means of conveyance be sealed during movement from one location to another helps ensure that the cargo area of the means of conveyance has not been entered while in transit and to ensure that the integrity of the shipment has been maintained (i.e., nothing was removed from or added to the shipment and the commodities have not been tampered with). Therefore, it is necessary that the means of conveyance be unsealed by an individual who has been properly trained regarding the requirements for sealing and removing the seals.

It has come to our attention that the restrictions described above regarding who may break the official seals on a means of conveyance carrying live ruminants can, in some cases, create a situation that is not conducive to the humane treatment of livestock. Means of conveyance carrying livestock often arrive at feedlots or at slaughtering establishments at night or on weekends, frequently when accredited veterinarians or State or USDA representatives are not present. Under the regulations in place before this interim rule, such livestock needed to be held on the means of conveyance until one of the authorized individuals became available.

We do not consider it necessary or acceptable to require such extended holding of the animals on the means of conveyance. To address this situation, we are providing in this interim rule that authorized USDA representatives may break the seals on the means of conveyance. Such individuals include any of the following: An APHIS Veterinary Services employee, a USDA Food Safety and Inspection Service inspector, a State representative, an accredited veterinarian, or an employee of an accredited veterinarian, slaughtering establishment, or feedlot who is designated by the accredited veterinarian or management of the slaughtering establishment or feedlot to unseal the means of conveyance.

To make this change in the regulations, we are providing in each of the following paragraphs that the official seals on a means of conveyance must be broken only by an authorized USDA representative:

• § 93.419(d)(4) regarding sheep and goats from Canada that are moved to a designated feedlot in the United States;

• § 93.419(d)(5) regarding sheep and goats from Canada that are moved from a designated feedlot in the United States to a recognized slaughtering establishment;

• § 93.420(a) regarding ruminants from Canada that are moved to a recognized slaughtering establishment in the United States for immediate slaughter;

• § 93.436(a)(4) regarding bovines from Canada that are moved to a recognized slaughtering establishment in the United States for immediate slaughter;

• § 93.436(b)(7) regarding bovines from Canada that are moved to a feedlot in the United States; and

• § 93.436(b)(10) regarding bovines from Canada that are moved from a feedlot in the United States to a recognized slaughtering establishment.

In § 93.400, we are removing the definition of *USDA representative* and adding a definition of *authorized USDA representative* to mean an APHIS Veterinary Services employee, a USDA Food Safety and Inspection Service inspector, a State representative, an accredited veterinarian, or an employee of an accredited veterinarian, slaughtering establishment, or feedlot who is designated by the accredited veterinarian or management of the slaughtering establishment or feedlot to perform the function involved. In the definition, we are also providing that, in order to designate an employee to break official seals, an accredited veterinarian or the management of a slaughtering establishment or feedlot must first supply in writing the name of the designated individual to the APHIS area veterinarian in charge in the State where the seals will be broken. Additionally, we are providing in the definition that the management of a slaughtering establishment or feedlot wishing to designate an employee to break the seals must enter into an agreement with Veterinary Services in which the management of the facility agrees that only designated individuals will break the seals, that the facility will contact an APHIS representative or USDA Food Safety and Inspection Service inspector immediately if the seals are not intact when the means of conveyance arrives or if the animals being transported appear to be sick or injured due to transport conditions, and that the facility will cooperate with APHIS representatives, USDA Food Safety and Inspection Service inspectors, and State representatives in maintaining records of sealed shipments received.

We are making such an agreement one of the criteria for designating employees to break seals at feedlots and slaughtering establishments in order to ensure that USDA will be notified in a timely manner of any violations of the requirements in § 93.419, § 93.420, and § 93.436 regarding sealed means of conveyance carrying ruminants from Canada or any other BSE minimal-risk region, that adequate records of such sealed shipments will be maintained, and that USDA will be notified in a timely manner of any apparent violations of the regulations in 9 CFR part 89 regarding the humane transport of livestock. Because accredited veterinarians have already entered into an agreement with APHIS to carry out functions in accordance with the regulations, it is not necessary to require accredited veterinarians who wish to designate an employee to break seals to additionally enter into the agreement described above.

We are adding a definition of *area veterinarian in charge (AVIC)* to mean the veterinary official of APHIS who is assigned by the Administrator to supervise and perform the official animal health work of APHIS in the State concerned.

Sealing of Means of Conveyance

In this interim rule, we are clarifying the wording in §§ 93.419(d)(5) and 93.436(b)(10) regarding who is authorized to apply official seals to means of conveyance carrying ruminants of Canadian origin, in order to eliminate possible confusion from our using similar terms to mean different things. In our January 2005 final rule, we indicated that the only individuals authorized to apply a U.S. Government seal to a means of conveyance carrying live ruminants from Canada from a designated feedlot (§ 93.419(d)(5) regarding sheep and goats) or feedlot (§ 93.436(b)(10) regarding bovines) to a slaughtering establishment are accredited veterinarians, State representatives, and USDA representatives. We defined *USDA representative* as a veterinarian or other individual employed by USDA who is authorized to perform the services required by part 93. In practice, in the situations described in §§ 93.419(d)(5) and 93.436(b)(10), a *USDA representative* will be an APHIS official.

As noted above, in this interim rule, we are using the term ''authorized USDA representative'' to indicate who must unseal means of conveyance at feedlots and slaughtering establishments. In order to avoid possible confusion between the use of similar terms with different meanings

(i.e., *authorized USDA representative* with regard to who is allowed to ''unseal'' means of conveyance at feedlots and slaughtering establishments and *USDA representative* with regard to who is allowed to ''seal'' means of conveyance at feedlots), we are specifying in §§ 93.419(d)(5) and 93.436(b)(10) that means of conveyance carrying live ruminants from a feedlot or designated feedlot to a slaughtering establishment must be sealed with seals of the U.S. Government by an accredited veterinarian, a State representative, or an APHIS representative. *APHIS representative* is defined in § 93.400 as a veterinarian or other individual employed by APHIS, USDA, who is authorized to perform the services required by part 93.

Transloading of Ruminant Products From Canada Being Transported Through the United States for Immediate Export

Section 94.18 of the regulations includes restrictions on the importation of meat and edible products of ruminants due to BSE, and § 95.4 includes restrictions on the importation of animal byproducts due to BSE. Paragraph (d) of § 94.18 and paragraph (h) of § 95.4 include conditions governing the overland shipment through the United States for immediate export of products and byproducts that are derived from bovines, sheep, and goats in Canada and that are eligible for entry into the United States. Among the provisions in §§ 94.18(d)(5) and 95.4(h)(4) governing such overland transiting is a prohibition on the transloading of these products while in the United States. By ''transloading,'' we mean the transfer in the United States of the cargo from the means of conveyance that carried it into the United States to another means of conveyance, either directly from the first means of conveyance to another means of conveyance or indirectly from the first means of conveyance to a storage area and then to a second means of conveyance.

In our final rule, we prohibited the transloading of bovine, sheep, and goat products and byproducts transiting the United States from Canada in order to ensure that such commodities are, in fact, moved out of the country and are not diverted for use in the United States.

It has come to our attention that, historically, one of the standard industry practices for shipments transiting overland from Canada to Mexico has been the transloading of products in the United States at the U.S.-Mexican border from the means of conveyance that carried the products through the United States directly into a waiting means of conveyance for delivery into Mexico.

Such limited direct transloading, if carried out under Federal supervision, can be done with adequate assurance that all of the products are exported from the United States. Therefore, we are amending the regulations in §§ 94.18(d)(5) and in 95.4(h)(4) to allow such direct transloading, provided it is carried out under the supervision of an authorized inspector (as defined in § 94.0) or an inspector (as defined in § 95.1). (Under the current regulations, *authorized inspector* is defined in § 94.0, and *inspector* is defined in § 95.1, to mean any individual authorized by the Administrator of APHIS or the Commissioner of Customs and Border Protection, Department of Homeland Security, to enforce the regulations of part 94 or part 95, respectively. We are retaining those definitions in the regulations.)

We are also providing in §§ 94.18(d)(5) and 95.4(h)(4) that an authorized inspector or an inspector must break the seals of the national government of the region of origin on the means of conveyance that carried the commodities into the United States and seal the means of conveyance that will carry the commodities out of the United States with seals of the U.S. Government.

We are defining *direct transloading* in §§ 94.0 and 95.1 to mean the transfer of cargo directly from one means of conveyance to another. Direct transloading does not include the removal of cargo from the first means of conveyance for storage in the United States and subsequent reloading to a second means of conveyance.

Immediate Action

Immediate action is warranted to facilitate the humane treatment of livestock and to remove unnecessary hindrances to international trade. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register.**

We will consider comments we receive during the comment period for this interim rule. (See **DATES** above.) After the comment period closes, we will publish another document in the **Federal Register.** The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

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

The Regulatory Flexibility Act requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. We have prepared an initial regulatory flexibility analysis, which is set forth below.

This interim rule amends the provisions that were established by our January 2005 final rule regarding (1) the breaking of official seals on shipments of ruminants from Canada, and (2) the transloading of ruminant products and byproducts transiting overland from Canada to Mexico. As discussed above, we are providing in this interim rule that the seals on means of conveyance moved from Canada either to a feedlot or to a slaughtering establishment must be broken by an authorized USDA representative, which can include an APHIS Veterinary Services employee, a USDA Food Safety and Inspection Service inspector, a State representative, an accredited veterinarian, or an employee of an accredited veterinarian or employee of a slaughtering establishment or feedlot who is designated by the accredited veterinarian or management of the slaughtering establishment or feedlot to perform the function involved. Regarding the overland transit of commodities from Canada to Mexico, firms have historically often transloaded products in the United States at the U.S.-Mexican border from the means of conveyance that carried the products through the United States directly into a waiting means of conveyance for delivery to Mexico. However, the final rule established a prohibition of the transloading in the United States of Mexico-bound shipments of Canadian ruminant products and byproducts. This interim rule will allow, under Federal supervision, the direct transloading at the U.S.-Mexican border of Canadian ruminant products and byproducts destined for Mexico.

This rule corrects two unforeseen effects of the final rule by removing unnecessary restrictions on (1) who is allowed to break official seals on shipments of Canadian ruminants received at feedlots and at recognized slaughtering facilities, and (2) the transit shipment through the United States of Canadian ruminant products and

byproducts destined for Mexico. The Animal Health Protection Act (7 U.S.C. 8301–8317) provides the basis for the rule.

Entities that will be directly affected by the interim rule are feedlots and recognized slaughtering facilities that receive ruminants from Canada, and firms that provide for the overland transit of Canadian ruminant products and byproducts to Mexico. These industries are predominantly composed of small entities, as described below.

A feedlot is considered to be a small entity by the Small Business Administration (SBA) if its annual receipts total no more than $1.5 million. In 2004, 88,000 of the 90,176 feedlots in the United States (97 percent) had capacities of less than 1,000 head.[1] The average annual number of cattle marketed by these feedlots of smaller capacity was fewer than 44 head.[2] Based on a market price per fed animal of $84.75 per hundredweight (100 pounds) and a slaughter weight of 1,250 pounds, annual receipts for the 97 percent of U.S. feedlots that have capacities of less than 1,000 head average about $46,600.[3] Clearly, most feedlot operations are small entities.

In 2002, there were a total of 1,869 animal slaughtering establishments in the United States, excluding establishments for poultry. Ninety-six percent of them (1,796) employed not more than 500 employees and, therefore, are considered small by SBA standards.[4]

The SBA considers a firm engaged in long-distance livestock trucking to be small if its annual receipts are not more than $21.5 million. In 2002, the average payroll of establishments engaged in long-distance specialized freight trucking was less than $421,000, and the average number of employees per establishment was fewer than 12 people.[5] Based on these payroll and employee averages, we expect that most firms engaged in long-distance trucking firms—including enterprises that transport livestock—earn annual receipts well below the small-entity threshold.

We do not know the number of feedlots or slaughtering establishments that will receive Canadian ruminants, nor do we know the number of trucking firms that will transload Canadian ruminant products or byproducts at the U.S.-Mexican border. Most of the affected businesses are likely small entities, and they are expected to benefit from the interim rule's lessening of regulatory restrictions. APHIS welcomes information that the public may provide regarding the number of small entities to which the interim rule will apply.

For feedlots and recognized slaughtering facilities receiving Canadian ruminants, the interim rule allows certain personnel designated by an accredited veterinarian or the facilities' managers to unseal the means of conveyance and unload the animals. The requirements that the names of such designated employees first be submitted by the accredited veterinarians or facility managers and that feedlots and slaughtering establishments enter into an agreement with APHIS are addressed below under the heading ''Paperwork Reduction Act.''

There are no significant alternatives to this rule that would accomplish the stated objectives. Without the interim rule, affected small entities would continue to be unnecessarily burdened by (1) costly off-loading delays that endanger the welfare of Canadian ruminants moved to U.S. feedlots and recognized slaughtering facilities, and (2) unnecessary inefficiencies at the U.S.-Mexican border in the overland transit of Canadian ruminant products and byproducts destined for Mexico.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0277 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 03–080–8, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 03–080–8 and send your comments within 60 days of publication of this rule.

This interim rule amends the regulations governing the importation of ruminants into the United States to broaden who is authorized to break seals on means of conveyances carrying certain ruminants of Canadian origin. We are providing that individuals authorized to break the seals on the means of conveyance can, in addition to a USDA employee (of APHIS Veterinary Services or a Food Safety and Inspection Service inspector), include any of the following: A State representative, an accredited veterinarian, or an employee of an accredited veterinarian, slaughtering establishment, or feedlot who is designated by the accredited veterinarian or management of the slaughtering establishment or feedlot to unseal the means of conveyance. If an accredited veterinarian or the management of a feedlot or slaughtering establishment designates an employee to break the seals, the accredited veterinarian or management of the facility must supply the name of the designated employee to the APHIS area veterinarian in charge. Additionally, the management of a slaughtering establishment or feedlot must enter into an agreement with Veterinary Services in which the management of the facility agrees that only designated individuals will break the seals, that the facility will contact an APHIS representative or USDA Food Safety and Inspection Service inspector immediately if the seals are not intact when the means of conveyance arrives or if the animals being transported appear to be sick or injured due to transport conditions, and that the facility will cooperate with APHIS representatives, USDA Food Safety and Inspection Service inspectors, and State representatives in maintaining records of sealed shipments received. We are soliciting comments from the public (as well as affected agencies) concerning this information collection requirement. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions,

[1] USDA NASS. ''Cattle on Feed'' (February 18, 2005). North American Industry Classification System (NAICS) code 112112, Cattle Feedlots.

[2] Ibid.

[3] $84.75 per cwt was the 2004 annual price for choice steers in Nebraska, as reported in USDA ''Livestock, Dairy, and Poultry Outlook,'' LDP–M–134, August 18, 2005. $84.75 per cwt × 12.5 cwt per head marketed × 44 head marketed per feedlot = $46,612.50 per feedlot.

[4] U.S. Census Bureau, 2002 Economic Census. NAICS code 311611, Animal (except Poultry) Slaughtering.

[5] U.S. Census Bureau, 2002 CBP United States Economic Profiles. NAICS code 484230, Specialized Freight (except Used Goods) Trucking, Long-Distance.

including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Accredited veterinarians, feedlot managers, and slaughter facility managers.

Estimated annual number of respondents: 900.

Estimated annual number of responses per respondent: 12.

Estimated annual number of responses: 10,800.

Estimated total annual burden on respondents: 2,700 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Government Paperwork Elimination Act Compliance

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

List of Subjects

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 95

Animal feeds, Hay, Imports, Livestock, Reporting and recordkeeping requirements, Straw, Transportation.

■ Accordingly, we are amending 9 CFR parts 93, 94, and 95 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 93.400 is amended by removing the definition of *USDA representative* and adding definitions of *area veterinarian in charge* and *authorized USDA representative* in alphabetical order to read as follows:

§ 93.400 Definitions.

* * * * *

Area veterinarian in charge (AVIC). The veterinary official of APHIS who is assigned by the Administrator to supervise and perform the official animal health work of APHIS in the State concerned.

* * * * *

Authorized USDA representative. An APHIS Veterinary Services employee, a USDA Food Safety and Inspection Service inspector, a State representative, an accredited veterinarian, or an employee of an accredited veterinarian, slaughtering establishment, or feedlot who is designated by the accredited veterinarian or management of the slaughtering establishment or feedlot to perform the function involved. In order to designate an employee to break official seals, an accredited veterinarian or the management of a slaughtering establishment or feedlot must first supply in writing the name of the designated individual to the APHIS AVIC in the State where the seals will be broken. Additionally, the management of a slaughtering establishment or feedlot must enter into an agreement with Veterinary Services in which the management of the facility agrees that only designated individuals will break the seals, that the facility will contact an APHIS representative or USDA Food Safety and Inspection Service inspector immediately if the seals are not intact when the means of conveyance arrives or if the animals being transported appear to be sick or injured due to transport conditions, and that the facility will cooperate with APHIS representatives, USDA Food Safety and Inspection Service inspectors, and State representatives in maintaining records of sealed shipments received.

* * * * *

■ 3. In § 93.419, in paragraph (d)(4), the first sentence, the words ''accredited veterinarian or a State or USDA representative or his or her designee'' are removed and the words ''authorized USDA representative'' are added in their place, and paragraph (d)(5) and the parenthetical reference to the Office of Management and Budget paperwork approval at the end of the section are revised to read as follows:

§ 93.419 Sheep and goats from Canada.

* * * * *

(d) * * *

(5) The animals must remain at the designated feedlot until transported to a recognized slaughtering establishment. The animals must be moved directly to the recognized slaughtering establishment in a means of conveyance sealed with seals of the U.S. Government by an accredited veterinarian, a State representative, or an APHIS representative. The seals must be broken at the recognized slaughtering establishment only by an authorized USDA representative;

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0040, 0579–0234, and 0579–0277)

§ 93.420 [Amended]

■ 4. In § 93.420, paragraph (a), the second sentence, the words ''accredited veterinarian or a State or USDA representative or his or her designee'' are removed and the words ''authorized USDA representative'' are added in their place, and a reference to the Office of Management and Budget paperwork approval is added at the end of the section to read ''(Approved by the Office of Management and Budget under control number 0579–0277)''.

■ 5. Section 93.436 is amended as follows:

■ a. In paragraph (a)(4), the second sentence, the words ''a USDA representative'' are removed and the words ''an authorized USDA representative'' are added in their place.

■ b. In paragraph (b)(7), the first sentence, the words ''accredited veterinarian or a State or USDA representative or his or her designee'' are removed and the words ''authorized

USDA representative'' are added in their place.

■ c. Paragraph (b)(10) is revised to read as follows:

§ 93.436 Ruminants from regions of minimal risk for BSE.

* * * * *

(b) * * *

(10) The bovines must be moved directly from the feedlot identified on APHIS Form VS 17–130 to a recognized slaughtering establishment in conveyances that must be sealed at the feedlot with seals of the U.S. Government by an accredited veterinarian, a State representative, or an APHIS official. The seals may be broken at the recognized slaughtering establishment only by an authorized USDA representative;

* * * * *

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 6. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

■ 7. Section 94.0 is amended by adding a definition of *direct transloading,* in alphabetical order, to read as follows:

§ 94.0 Definitions.

* * * * *

Direct transloading. The transfer of cargo directly from one means of conveyance to another.

* * * * *

■ 8. In § 94.18, paragraph (d)(5)(ii) is revised to read as follows:

§ 94.18 Restrictions on importation of meat and edible products from ruminants due to bovine spongiform encephalopathy.

* * * * *

(d) * * *

(5) * * *

(ii) The commodities may not be transloaded while in the United States, except for direct transloading under the supervision of an authorized inspector, who must break the seals of the national government of the region of origin on the means of conveyance that carried the commodities into the United States and seal the means of conveyance that will carry the commodities out of the United States with seals of the U.S. Government;

* * * * *

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

■ 9. The authority citation for part 95 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 10. Section 95.1 is amended by adding a definition of *direct transloading,* in alphabetical order, to read as follows:

§ 95.1 Definitions.

* * * * *

Direct transloading. The transfer of cargo directly from one means of conveyance to another.

* * * * *

■ 11. Section 95.4 is amended by revising paragraph (h)(4)(ii) to read as follows:

§ 95.4 Restrictions on the importation of processed animal protein, offal, tankage, fat, glands, certain tallow other than tallow derivatives, and serum due to bovine spongiform encephalopathy.

* * * * *

(h) * * *

(4) * * *

(ii) The commodities are not transloaded while in the United States, except for direct transloading under the supervision of an inspector, who must break the seals of the national government of the region of origin on the means of conveyance that carried the commodities into the United States and seal the means of conveyance that will carry the commodities out of the United States with seals of the U.S. Government;

* * * * *

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

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–23334 Filed 11–25–05; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Parts 210 and 229

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

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

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

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

EFFECTIVE DATE: July 1, 2006.

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

SUPPLEMENTARY INFORMATION:

Background

Existing Law and the Board's Proposed Rule

''Remotely created checks'' typically are created when the holder of a checking account authorizes a payee to draw a check on that account but does not actually sign the check.[1] In place of the signature of the account-holder, the remotely created check generally bears a statement that the customer authorized the check or bears the customer's printed or typed name. Remotely created checks can be useful payment devices. For example, a debtor can authorize a credit card company to create a remotely created check by telephone, which may enable the debtor to pay his credit card bill in a timely

[1] There is no commonly accepted term for these items. The terms ''remotely created check,'' ''telecheck,'' ''preauthorized drafts,'' and ''paper draft'' are among the terms that describe these items.

manner and avoid late charges. Similarly, a person who does not have a credit card or debit card can purchase an item from a telemarketer by authorizing the seller to create a remotely created check.

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

Existing Law on Remotely Created Checks

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

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

The provisions of the U.C.C. cited above implement the rule set forth in the seminal case of *Price* v. *Neal*,[6] which held that drawees of checks and other drafts must bear the economic loss when the instruments they pay are not properly payable because the drawer did not authorize the item.[7] Under the *Price* v. *Neal* rule, the paying bank must bear the economic loss of an unauthorized check with little recourse other than bringing an action against the person that created the unauthorized item. This rule currently applies to all checks, including remotely created checks, in a majority of states.

The policy rationale for the *Price* v. *Neal* rule is that the paying bank, rather than the depositary bank, is in the best position to judge whether the signature on a check is the authorized signature of its customer. Remotely created checks, however, do not bear a handwritten signature of the drawer that can be verified against a signature card. In most cases, the only means by which a paying bank could determine whether a remotely created check is unauthorized and return it in a timely manner would be to contact the customer before the midnight deadline passes. However, before a paying bank can verify the authenticity of remotely created checks, it first must identify remotely created checks drawn on its accounts. Because there is no code or feature on remotely created checks that would enable a paying bank to identify them reliably in an automated manner, remotely created checks rarely come to the attention of paying banks until a customer identifies the check as unauthorized, usually well after the midnight deadline.

Recent Legal Changes to Address Remotely Created Checks

Amendments to the U.C.C.

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

These revisions rest on the premise that it is appropriate to shift the burden of ensuring authorization of a remotely created check to the bank whose customer deposited the remotely created check because this bank is in the best position to detect the fraud.[11] The U.C.C. warranty provides an economic incentive for the depositary bank to monitor customers that deposit remotely created checks and, therefore, should have the effect of limiting the quantity of unauthorized remotely created checks that are introduced into the check collection system.

Amendments to State Laws

Fewer than half the states in the U.S. have amended their Articles 3 and 4 to include provisions to address remotely created checks.[12] Among the states that have made such amendments, the definitions and warranties are not uniform in their scope or requirements. In addition to the state codes, some check clearinghouses have adopted warranties that apply to remotely created checks that are collected through these clearinghouses. The state-by-state approach to the adoption of remotely created check warranties complicates the determination of liability for remotely created checks collected across state lines, because the bank that presents a check may not be

[2] U.C.C. 4–401.

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

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

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

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

[7] *See also Interbank of New York* v. *Fleet Bank,* 730 NYS 2d 208 (2001).

[8] U.C.C. 3–103(16).

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

[10] For items other than remotely-created consumer items, the transferor must warrant only that it has ''no knowledge'' that the instrument is unauthorized. U.C.C. 3–417(a)(3).

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

[12] Those states include Arkansas, California, Colorado, Hawaii, Idaho, Iowa, Maine, Missouri, Minnesota, Nebraska, New Hampshire, North Dakota, Oregon, Tennessee, Texas, Utah, Vermont, West Virginia, and Wisconsin.

subject to the same rules as the paying bank.

Proposed Rule

On March 4, 2005, the Board published for comment a proposal to amend Regulation CC to provide transfer and presentment warranties for remotely created checks.[13] This proposal was issued pursuant to the Expedited Funds Availability Act (the EFA Act), Pub. L. 100–86, 101 Stat. 635 (codified at 12 U.S.C. 4001 *et seq.*), which authorizes the Board to establish rules allocating losses and liability among depository institutions ''in connection with any aspect of the payment system.'' [14] As noted above, the check collection and return system operates nationally. As a result, in order for the remotely created check warranties to be effective they must apply uniformly and nationwide.

The Board proposed to define a ''remotely created check'' as a check that is drawn on a customer account at a bank, is created by the payee, and does not bear a signature in the format agreed to by the paying bank and the customer. Unlike the U.C.C. amendments, the Board's proposed definition would apply to remotely created checks drawn on both consumer and non-consumer accounts.

The Board proposed to create transfer and presentment warranties that would apply to remotely created checks that are transferred or presented by banks to other banks. Under the proposed warranties, any transferor bank, collecting bank, or presenting bank would warrant that the remotely created check that it is transferring or presenting is authorized according to all of its terms by the person on whose account the check is drawn. The proposed warranties would apply only to banks and ultimately would shift liability for the loss created by an unauthorized remotely created check to the depositary bank. A paying bank would not be able to assert a warranty claim under the Board's proposed rule directly against a nonbank payee that created or transferred an unauthorized remotely created check.

[13] 70 FR 10509.

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

General Comments

The Board received over 250 comments on the proposed rule from depository institutions of various sizes, trade associations that represent depository institutions, state attorneys general, individuals, academics, consumer representatives, the Permanent Editorial Board of the U.C.C., and Reserve Banks. This section presents an overview of the central points contained in the comments that the Board received. The section-by-section analysis of the final rule, set forth below, discusses the comments in greater detail and responds to specific concerns regarding the definition of remotely created check and the scope of the warranties.

The commenters provided overwhelming support for the proposed rule, although many suggested that the Board make specific revisions in the final rule. The Board received many comments in favor of the proposal from small depository institutions, many of which noted that they regularly suffer losses as the result of unwittingly paying remotely created checks that customers later identify as unauthorized. Large depository institutions and their trade associations also strongly supported the proposal and specifically addressed a number of important issues discussed below.

Only one depository institution opposed the proposal in its entirety, arguing that there is no factual predicate for the proposed rule because paying banks do not verify the authenticity of customer signatures on any checks. The Board believes that many banks do examine signatures on some subset of checks. Nevertheless, given that remotely created checks do not bear a verifiable mark of authentication, the depositary bank is in a better position to prevent the introduction of unauthorized remotely created checks into the check collection process by acquainting itself with the business practices of its customers who routinely deposit such checks. The purpose of the Board's rule is to create an economic incentive for depositary banks to perform the requisite due diligence on their customers by shifting liability for unauthorized remotely created checks to the depositary bank.

Some commenters, including Attorneys General representing 35 states, recommended that the Board prohibit the use of remotely created checks altogether, arguing principally that legitimate use of remotely created checks has significantly declined, largely as a result of new automated clearing house (ACH) payment applications that can be used in place of remotely created checks. Several commenters, however, reported an increase in the use of the remotely created checks (albeit some noting that this increase in use has been accompanied by a commensurate increase in unauthorized remotely created checks). The Board believes that substantial additional research would be required about the uses of remotely created checks and the commercial impact of an outright ban before a prohibition by statute or regulation could be justified. The Board believes its rule provides effective protections against unauthorized remotely created checks while still allowing for the legitimate use of those checks.

Some commenters argued that remotely created checks also should be covered by the Board's Regulation E (12 CFR Part 205), because payments by remotely created check are in fact electronic fund transfers subject to the Electronic Funds Transfer Act (EFTA), which, among other things, requires certain disclosures related to transfers covered by the Act.[15] Under the EFTA, the term ''electronic fund transfer'' includes any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument.[16] Therefore, as a general matter, the EFTA does not apply to funds transferred from a consumer's account by means of a check. The commenters argued that a remotely created check is initiated by an electronic communication between the consumer and a third party and not by a check or similar paper instrument. Further clarification of the applicability of the EFTA to check transactions that are authorized on-line or by telephone must be made within the context of Regulation E. The Board will continue to monitor developments to determine whether further action is appropriate.

Extension of the Midnight Deadline

The Board invited comment on whether a different approach to address the risks of remotely created checks would be appropriate. One alternative on which the Board requested comment was whether the Board should extend the U.C.C. midnight deadline for paying banks that return unauthorized remotely created checks to give the paying bank more time to determine whether a particular check was authorized. Some commenters favored the approach because it would mirror the ACH rules set forth by the National Automated Clearing House Association for unauthorized ACH debits, while others

[15] 15 U.S.C. 1693 *et seq.*

[16] 15 U.S.C. 1693a(6).

opposed this approach arguing that it would delay finality of check payments. One commenter argued that if the Board adopted this approach, then it also should exempt remotely created checks from the funds availability schedule in Regulation CC because the availability schedules are generally related to the collection and return times for a check.

Other commenters viewed the possible midnight deadline extension not as an alternative to creation of new warranties, but as a different enforcement mechanism for the new warranties. These commenters thought that instead of having to make a warranty claim outside of the check collection process when the paying bank seeks to recoup losses following a breach of the remotely created check warranty, extension of the midnight deadline would enable the paying bank to return the unauthorized remotely created through the check collection process. Many of the commenters in this group advocated handling the warranty claim on a ''with entry'' basis, which is a procedure that has been adopted by certain clearinghouses and which allows a warranty claim to be made through the procedures for returned checks.[17] A few commenters suggested an additional nuance to this approach: unauthorized remotely created checks under $1000 should be handled on a ''with entry'' basis and unauthorized remotely created checks over $1000 should be handled as a warranty claim outside of the check collection and return process.

Because the Board believes that finality of payment and the discharge of the underlying obligation are fundamental and valuable features of the check collection process, the final rule does not make any adjustments to the midnight deadline. Until otherwise established by agreement, banks must assert claims arising under transfer and presentment warranties for remotely created checks outside of the check collection process.

Action by State Governments

The Board also requested comment on whether it should refrain from addressing remotely created checks in Regulation CC and await adoption of the U.C.C. warranties for remotely created checks, or some variation thereof, by all of the states. Numerous commenters expressed opposition to this approach. Generally, these commenters argued that states have been too slow to act on this issue and have not and will not necessarily act uniformly. However, one commenter urged the Board to refrain from usurping the U.C.C. process, arguing that hesitancy by state legislatures to adopt a uniform law may signal defects in the proposed amendment. In light of the comments favoring action by the Board from the Permanent Editorial Board of the U.C.C., as well as thirty-five state Attorneys General, the Board believes that there is broad support for amendments to Regulation CC to address remotely created checks on a nationwide basis and that such amendments are appropriate.

Section-by-Section Analysis

Section 229.2(fff) Definition

The Board proposed the following definition: A *remotely created check* means a check that is drawn on a customer account at a bank, is created by the payee, and does not bear a signature in the format agreed to by the paying bank and the customer. Commenters had numerous concerns regarding the scope of the proposed definition.

On the issue of whether the definition of remotely created checks should cover items drawn on both consumer and non-consumer accounts, all but one of the commenters addressing this issue supported covering remotely created checks drawn on both consumer and non-consumer accounts. These commenters stated that there is no reason to distinguish between fraud against consumers and fraud against businesses for purposes of this rule.[18] Furthermore, one commenter noted that, as an operational matter, it would be more efficient for banks to treat remotely created checks drawn on both consumer and non-consumer accounts the same. For these reasons, the final rule applies to remotely created checks drawn on both consumer and non-consumer accounts.

With respect to the other elements of the definition, numerous commenters, particularly large depository institutions, preferred the following definition (or minor variations thereon): A remotely created check is a check that (i) Is drawn on a customer account at a bank, (ii) is not created by the paying bank, and (iii) does not bear a signature purporting to be the signature of the customer. In the alternative, several commenters favored the definition of demand draft in the commercial code of California, arguing that this definition has been adopted in a number of states and has been applied successfully over the past nine years.[19]

With respect to the proposal that a remotely created check must be created by the payee, numerous commenters noted that depository institutions have no physical means of distinguishing between a remotely created check created by a payee and a remotely created check created by, for example, a bill payment service on behalf of the drawer.

The Board considered alternative ways of defining remotely created checks from the perspective of how they were created. Under one formulation, the definition could require that a check not be created by the paying bank in order to be a remotely created check. The advantage of that formulation is that the paying bank should be able to determine whether it created a check and whether the warranty applies. That requirement, however, would not exclude a check created by the customer (such as a check that a customer filled out but forgot to sign) or the customer's agent, such as a bill payment service. However, the Board believes that these checks do not present the same risk that the check was not actually authorized by the drawer as the typical telemarketer-created check that is made payable to the entity that created it.

Under another formulation, the definition could exclude checks that are created by the paying bank as well as checks that are created by the customer or the customer's agent. This formulation, however, would exclude from the warranty checks created by telemarketers or other payees to the

[17] Under the Electronic Check Clearing House Organization's Uniform Paper Check Exchange Rules, the paying bank ''may make a warranty claim'' by ''delivering such check to the clearinghouse or the depositary bank for settlement, in accordance with the clearinghouse's rules for returned checks.'' While the claim is processed through the return settlement process, the delivery of the check to the clearing house, and ultimately the depositary bank, is not a ''return'' of the check under the U.C.C. or Regulation CC.

[18] The one commenter that favored limiting the scope to consumer items argued that if the definition covers commercial accounts, it would weaken the ability of the bank to contract with its commercial customers for timely review of account activity. The Board does not believe this concern warrants a limitation on the scope of the definition. The Board's final rule creates transfer and presentment warranties among banks and is not intended to interfere with the contractual relationships between depository institutions and their customers. The legal relationship between the paying bank and its customer with respect to whether a check was authorized or whether a claim was made in a timely manner continues to be governed by state law.

[19] Under California U.C.C. § 3104(k) a demand draft means a writing not signed by a customer that is created by a third party under the purported authority of the customer for the purpose of charging the customer's account with a bank. A demand draft shall contain the customer's account number and may contain any of the following: (1) The customer's printed or typewritten name. (2) A notation that the customer authorized the draft. (3) The statement ''No Signature Required'' or words to that effect.

extent they were acting as agent of the customer, as well as checks created on behalf of the customer by a bill payment service. At a minimum, this formulation would raise issues as to the scope of the creating entity's agency and would seem to cause as many evidentiary difficulties as the Board's original proposal.

After considering the benefits and drawbacks of each formulation, the definition in the Board's final rule requires that a remotely created check must be created by a person other than the paying bank. This definition will be operationally efficient for paying banks because they easily can determine whether the warranty applies to a particular check. In addition, this formulation is consistent with the analogous definition in the U.C.C. Under this definition, the parties to the check will not have to distinguish checks that are created by the payee from checks that are created by a customer's bill-payment service in order to assert a warranty claim. As noted above, the definition will cover certain checks created remotely by bill-payment services, as well as checks that the drawer created but neglected to sign, where there is a less compelling reason for shifting liability for unauthorized checks to the depositor's bank. Including these checks, however, is unlikely to result in significantly greater liability for depositary banks. It appears that such checks are generally less prone to fraud, and, therefore, less prone to trigger a warranty claim than are payee-created checks.

Numerous commenters objected to the requirement that a remotely created check not bear a signature ''in the format'' agreed to by the paying bank and the customer. Many commenters argued that litigation will ensue over the meaning of the phrase ''in the format,'' and that the language will sweep traditional forged checks into the warranty because a forged check may be deemed to not bear a signature in the format agreed to by the paying bank and its customer. Most commenters favored focusing simply on whether a signature was present or not. The language of the proposed definition was intended to introduce greater specificity around the term ''signature,'' which is very broadly defined under the U.C.C., to ensure that the definition does not include traditional forged checks in the warranties. However, in light of the persuasive criticism from numerous commenters, the final rule requires that a remotely created check not bear a signature ''applied by, or purported to be applied by, the person on whose account the check is drawn.'' The commentary to the final rule explains that the term ''applied by'' refers to the physical act of placing the signature on the check. This formulation should more clearly exclude traditional forged checks from the operation of the new warranties, but include checks created by telemarketers and similar payees.

Several commenters noted that under the definition of customer account in Regulation CC, checks drawn on accounts such as money market accounts and credit accounts would be excluded from the definition of remotely created check, because the proposed definition is limited to checks drawn on a customer account, which under Regulation CC does not include all types of accounts on which checks can be drawn. These commenters pointed out that the U.C.C. definition of remotely created checks, which covers ''accounts'' as defined by the U.C.C., includes checks drawn on various types of consumer checking accounts and the Board should also expand its definition of customer account for purposes of the remotely created check warranties. The Board sees no reason to exclude these types of checks from the operation of the new warranties and the final rule expands the definition of account in the final rule, solely for the purposes of the new warranties, to include any credit or other arrangement that allows a person to draw checks on a bank.

Commenters also argued that the definition of remotely created check should cover ''payable through'' or ''payable at'' checks. Many of these checks are drawn on a nonbank, such as a mutual fund, but payable through or at a bank. Under Regulation CC the term ''check'' means a negotiable demand draft drawn on or payable through or at an office of a bank.[20] Therefore, the definition of remotely created check could include a ''payable through'' or ''payable at'' check if the other requirements of the regulation are met. With regard to the requirement that a remotely created check not bear the signature of the account-holder, the signature of the person on whose account the check is drawn would be the signature of the payor institution (*e.g.*, a mutual fund) or the signatures of the customers who are authorized to draw checks on that account, depending on the arrangements between the ''payable through'' or ''payable at'' bank, the payor institution, and the customers. The Board has added clarifying language to the commentary.

One commenter urged the Board to confirm that a substitute check created from a remotely created check benefits from the warranties for remotely created checks. The commentary to the final rule specifically states that the transfer and presentment warranties for remotely created checks would apply to a substitute check that represents a remotely created check.

Section 229.34 Warranties

The Board proposed the following transfer and presentment warranties with respect to a remotely created check: A bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants to the transferee bank, any subsequent collecting bank, and the paying bank that the person on whose account the remotely created check is drawn authorized the issuance of the check according to the terms stated on the check.

Numerous commenters urged the Board to limit the warranty to the terms stated on the ''face of the check.'' Others urged the Board to adopt the U.C.C. approach, requiring only a warranty that ''the person on whose account the check is drawn authorized the issuance of the check in the amount for which it is drawn.''[21] Commenters argued that the proposed warranty could be construed to cover the indorsements on the back of the check and the date. The Board did not intend to create warranties that would cover the indorsements on a remotely created check because the U.C.C. already contains indorsement warranties. In addition, other information on the front of the check, such as the date, does not give rise to the risk of fraud as does the name of the payee and the amount. Accordingly, the final rule states with specificity that the transfer and presentment warranties apply only to the fact of authorization by the account holder, the amount stated on the check, and issuance to the payee stated on the check.

A few commenters suggested that the depositor of a remotely created check should also be required to make the new warranties, as is the case with the U.C.C. warranties relating to remotely created consumer items. One commenter suggested that the customer of the paying bank should be able to assert a § 229.34(d) warranty claim directly against a transferring or presenting bank. The authority under which the Board is adopting this amendment is limited to establishing rules imposing or allocating losses and liability among depository institutions in connection with any aspect of the payment system.[22] However, although these warranties do not extend to losses and

[20] 12 CFR 229.2(k).

[21] *See e.g.* U.C.C. 3–417(a)(4).

[22] See footnote 14, *supra*.

liability as between depository institutions and their nonbank customers, banks may choose to allocate liability to customers by agreement. The final rule also does not alter the rights or liabilities of customers of depository institutions under state law.

Commenters also suggested that the commentary address the situation in which the customer authorizes that the check be made payable to the payee's trade name, but the check is instead made payable to the legal name of the payee. Under the new transfer and presentment warranties, banks will warrant that the customer authorized the issuance of the check to the payee stated on the check. Whether an alteration of the payee's name from the trade name to the legal name would result in a breach of warranty will depend on whether the change is within the scope of the customer's authorization. Because that determination would have to be made on a case-by-case basis, the Board has not added any general statement on such a situation to the commentary.

A number of commenters urged the Board to state explicitly that the warranties would not cover the situation in which the initial authorization by the account-holder was subsequently disclaimed as the result of ''buyer's remorse'' by the account-holder. As noted in the proposed rule, the Board anticipates that the transfer and presentment warranties will supplement the FTC's Telemarketing Sales Rule (16 CFR 310.3(a)(3)), which requires telemarketers that submit instruments for payment to obtain the customer's ''express verifiable authorization.'' A depositary bank could tender the authorization obtained by its telemarketer customer as a defense to a paying bank warranty claim. Therefore, the paying bank would not prevail on a warranty claim if the customer had, in fact, authorized the transaction but later suffered ''buyer's remorse.'' If the paying bank can show that the check was properly payable from the customer's account, then it would be able to charge the account for the check in accordance with U.C.C. 4–401.

Defenses to Warranty Claims

Several commenters argued that when a paying bank makes a claim under the remotely created check warranties a depositary bank should be able to assert certain defenses that the paying bank would have against its customer under the U.C.C. Specifically, the commenters noted that U.C.C. 4–406 places a duty on a customer to discover and report unauthorized checks with reasonable promptness and limits a paying bank's liability if the customer fails to perform that duty. The commenters suggested that a paying bank should be precluded from asserting a warranty claim against a depositary bank where the paying bank's liability to the customer would have been limited by U.C.C. 4–406 had the paying bank asserted its own defenses. The commenters noted that the U.C.C. warranty provisions permit similar defenses by warranting banks.

The U.C.C. provides that the warrantor may defend a warranty claim based on an unauthorized indorsement or alteration by proving that the drawer is precluded from asserting that claim because of his or her failure to discover the lack of authorization in a timely manner.[23] The Official Comment explains the purpose of the provision: if the drawer's conduct contributed to a loss from a forged indorsement or alteration, the drawee should not be allowed to shift the loss from the drawer to the warrantor.[24] While the drafters of the U.C.C. did not extend this defense to an unauthorized remotely-created consumer item, commenters argued that the stated purpose of the U.C.C. 3–417(c) defense should apply to a remotely created check warranty claim under Regulation CC. The Board believes that such a defense would be appropriate. Therefore, the regulation and the commentary to the final rule provide that the depositary bank may defend a remotely created check warranty claim by proving that customer is precluded under U.C.C. 4–406 from asserting a claim against the paying bank for the unauthorized issuance of the check. This may be the case, for example, when the customer fails to discover the unauthorized remotely created check in a timely manner.

One commenter stated that the proposed warranty for remotely created checks should be limited in a way that is similar to the indemnification related to the creation and collection of substitute checks. The commenter argued that the indemnity provision of the Check Clearing for the 21st Century Act, as implemented by Regulation CC, shifts liability to the reconverting banks for losses due to the absence of security features that do not survive the imaging process, and, therefore, do not appear on substitute checks, only in those instances in which the paying bank's processes actually would have relied on the security features that were lost in the imaging process. These lost security features, it is argued, are analogous to the lack of an authorized signature on the remotely created check.[25] The commenter argued that by analogy the warranty that the Board proposed with respect to remotely created checks should not apply under circumstances in which the paying bank would not have verified the signatures anyway, for example because the checks were under the dollar amount set by the paying bank for such purposes.

The Board's rule on remotely created checks is intended to reduce the fraudulent use of unauthorized remotely created checks by creating an incentive for depositary banks to be more vigilant when accepting such checks for deposit. This incentive would be seriously weakened if the regulation required the paying bank to make the showing suggested by the commenter. Therefore, the final rule does not adopt this suggestion.

Effective Date

A number of commenters suggested that the final rule include an implementation period of not less than six months. The final rule is effective July 1, 2006.

Additional Considerations

MICR Line Identifier

The Board requested comment on whether digits should be assigned in the External Processing Code (EPC) Field (commonly referred to as Position 44) of the magnetic ink character recognition (MICR) line to identify remotely created checks. Most commenters opposed this aspect of the proposal, arguing that the unassigned digits in the EPC Field could best serve other purposes and that enforcement of such a rule would be cumbersome at best. Ten commenters specifically expressed support for assigning digits in the EPC Field, arguing that it would facilitate the tracking of remotely created checks. However, without broad support for such a rule, and in light of the impracticalities of enforcement, the Board has determined not to pursue a MICR identifier for remotely created checks.

Relation to State Law

Many commenters supported the proposed amendment to Regulation CC as a means to establish uniformity with respect to liability for unauthorized remotely created checks. Some of these commenters presumed that the amendment to Regulation CC would preempt state laws that address unauthorized remotely created checks or their equivalents. However, several

[23] U.C.C. 3–417(c).

[24] U.C.C. 3–417, Official Comment, 6.

[25] 12 U.S.C. 5005, as implemented at 12 CFR 229.53(a) and the accompanying commentary.

commenters raised the issue of preemption explicitly by stating that the warranties provided in Regulation CC should preempt state law warranties and that the one-year statute of limits for actions under subpart C of Regulation CC should preempt statute of limitations for breach of demand draft warranties under state law (generally 3 years). One commenter recommended that the Board's amendments explicitly preempt the field to eliminate confusion about the application of state laws that govern remotely created checks. Section 608(b) of the Expedited Funds Availability Act provides that Board rules prescribed under that Act shall supersede any provision of state law, including the UCC as in effect in such state, that is inconsistent with the Board rules. To the extent that the state law is inconsistent with the Board's rules on remotely created checks, the Board's rules would supersede such state law. The Board will monitor the interaction of state law and Regulation CC, and may take further action at a later time if necessary.

Price v. Neal

One commenter suggested that the Board overrule the *Price* v. *Neal* doctrine for all checks. The *Price* v. *Neal* doctrine dates back to the 1760s and is based on the assumption that the paying bank should bear the loss for unauthorized checks because it is in the best position to prevent fraud by comparing signatures on checks with signature cards on file with the bank. The commenter argued that, at present, automated check processing that relies on the MICR line means that signature verification of checks by back-room personnel no longer plays a meaningful role in stopping check fraud. However, other commenters argued that the depositary bank generally has no better means to detect unauthorized checks than the paying bank and, therefore, the argument would provide no logical basis for abandoning the *Price* v. *Neal* doctrine. Furthermore, as one commenter noted, the advent of signature recognition software may soon enable the paying bank to verify signatures on an automated basis. The final rule reverses the *Price* v. *Neal* rule for remotely created checks only. However, the Board would welcome a public dialogue on broader check law issues, such as the utility of and possible alternatives to the *Price* v. *Neal* rule in the modern check processing environment.

Conforming Amendments to Regulation J

The Board is also amending Regulation J to make clear that the new remotely created check warranties apply to remotely created checks collected through the Federal Reserve Banks.

Regulatory Analysis

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1) and under authority delegated by the Office of Management and Budget, the Board has reviewed the final rule and determined that it contains no collections of information.

Regulatory Flexibility Act

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

The RFA requires agencies to examine the objectives, costs and other economic implications on the entities affected by the rule. (5 U.S.C. 603.) Under section 3 of the Small Business Act, as implemented at 13 CFR part 121, subpart A, a bank is considered a ''small entity'' or ''small bank'' if it has $150 million or less in assets. Based on June 2005 call report data, the Board estimates that there are approximately 13,400 depository institutions with assets of $150 million or less.

The amendments to Regulation CC create a definition of a remotely created check and warranties that apply when a remotely created check is transferred or presented. The amendments require any bank that transfers or presents a remotely created check to warrant that the person on whose account the remotely created check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. The purpose of the amendments is to place the liability for an unauthorized remotely created check on the bank that is in the best position to prevent the loss. By shifting the liability to the bank in the best position to prevent the loss caused by the payment of an unauthorized remotely created check, the Board anticipates that the amendments will reduce costs for all banks that handle remotely created checks. Banks seeking to minimize the risk of liability for transferring remotely created checks will likely screen with greater scrutiny customers seeking to deposit remotely created checks. The Board believes that the controls that small institutions will develop and implement to minimize the risk of accepting unauthorized remotely created checks for deposit likely will pose a minimal negative economic impact on those entities. Furthermore, there was unanimous support for transfer and presentment warranties for remotely created checks from the small institutions that commented on the proposal. These institutions noted that the warranties will enable them to reduce losses they currently suffer when they inadvertently pay an unauthorized remotely created check.

The RFA requires agencies to identify all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule. As noted above, the Board's Regulation J includes cross-references to the warranties set forth in Regulation CC and the rule amends such cross-references to include the warranties. As also noted above, the rule overlaps with at least 19 state codes that presently provide warranties for instruments that are similar to remotely created checks.

List of Subjects in 12 CFR Parts 210 and 229

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

Authority and Issuance

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

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

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

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

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

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

(a) * * *

(3) *Warranties for all electronic items.* The sender makes all the warranties set forth in and subject to the terms of 4–207 of the U.C.C. for an electronic item as if it were an item subject to the U.C.C.

and makes the warranties set forth in and subject to the terms of § 229.34(c) and (d) of this chapter for an electronic item as if it were a check subject to that section.

* * * * *

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

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

* * * * *

(b) * * *

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

* * * * *

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

§ 210.9 Settlement and payment.

* * * * *

(b) * * *

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

* * * * *

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

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

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

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

§ 229.2 Definitions.

* * * * *

(fff) *Remotely created check* means a check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn. For purposes of this definition, ''account'' means an account as defined in paragraph (a) of this section as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank.

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

§ 229.34 Warranties.

* * * * *

(d) *Transfer and presentment warranties with respect to a remotely created check.* (1) A bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants to the transferee bank, any subsequent collecting bank, and the paying bank that the person on whose account the remotely created check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. For purposes of this paragraph (d)(1), ''account'' includes an account as defined in § 229.2(a) as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank.

(2) If a paying bank asserts a claim for breach of warranty under paragraph (d)(1) of this section, the warranting bank may defend by proving that the customer of the paying bank is precluded under U.C.C. 4–406, as applicable, from asserting against the paying bank the unauthorized issuance of the check.

* * * * *

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

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

* * * * *

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

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

* * * * *

■ 9. In Appendix E to part 229:

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

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

Appendix E to Part 229—Commentary

* * * * *

II. Section 229.2 Definitions

* * * * *

OO. 229.2(oo) Interest Compensation

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

* * * * *

FFF. 229.2(fff) Remotely Created Check

1. A check authorized by a consumer over the telephone that is not created by the paying bank and bears a legend on the signature line, such as ''Authorized by Drawer,'' is an example of a remotely created check. A check that bears the signature applied, or purported to be applied, by the person on whose account the check is drawn is not a remotely created check. A typical forged check, such as a stolen personal check fraudulently signed by a person other than the drawer, is not covered by the definition of a remotely created check.

2. The term signature as used in this definition has the meaning set forth at U.C.C. 3–401. The term ''applied by'' refers to the physical act of placing the signature on the check.

3. The definition of a ''remotely created check'' differs from the definition of a ''remotely created consumer item'' under the U.C.C. A ''remotely created check'' may be drawn on an account held by a consumer, corporation, unincorporated company, partnership, government unit or instrumentality, trust, or any other entity or organization. A ''remotely created consumer item'' under the U.C.C., however, must be drawn on a consumer account.

4. Under Regulation CC (12 CFR part 229), the term ''check'' includes a negotiable demand draft drawn on or payable through or at an office of a bank. In the case of a ''payable through'' or ''payable at'' check, the signature of the person on whose account the check is drawn would include the signature of the payor institution or the signatures of the customers who are authorized to draw checks on that account, depending on the arrangements between the ''payable through'' or ''payable at'' bank, the payor institution, and the customers.

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

* * * * *

XX. Section 229.34 Warranties

* * * * *

D. 229.34(d) Transfer and Presentment Warranties

1. A bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants that the person on whose account the check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. The warranties are given only by banks and only to subsequent banks in the collection chain. The warranties ultimately shift liability for the loss created by an unauthorized remotely created check to the depositary bank. The depositary bank cannot assert the transfer and presentment warranties against a depositor. However, a depositary bank may, by agreement, allocate liability for such an item to the depositor and also may have a claim under other laws against that person.

2. The transfer and presentment warranties for remotely created checks supplement the Federal Trade Commission's Telemarketing Sales Rule, which requires telemarketers that submit checks for payment to obtain the customer's ''express verifiable authorization'' (the authorization may be either in writing or tape recorded and must be made available upon request to the customer's bank). 16 CFR 310.3(a)(3). The transfer and presentment warranties shift liability to the depositary bank only when the remotely created check is unauthorized, and would not apply when the customer initially authorizes a check but then experiences ''buyer's remorse'' and subsequently tries to revoke the authorization by asserting a claim against the paying bank under U.C.C. 4–401. If the depositary bank suspects ''buyer's remorse,'' it may obtain from its customer the express verifiable authorization of the check by the paying bank's customer, required under the Federal Trade Commission's Telemarketing Sales Rule, and use that authorization as a defense to the warranty claim.

3. The scope of the transfer and presentment warranties for remotely created checks differs from that of the corresponding U.C.C. warranty provisions in two respects. The U.C.C. warranties differ from the § 229.34(d) warranties in that they are given by any person, including a nonbank depositor, that transfers a remotely created check and not just to a bank, as is the case under § 229.34(d). In addition, the U.C.C. warranties state that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn. The § 229.34(d) warranties specifically cover the amount as well as the payee stated on the check. Neither the U.C.C. warranties, nor the § 229.34(d) warranties apply to the date stated on the remotely created check.

4. A bank making the § 229.34(d) warranties may defend a claim asserting violation of the warranties by proving that the customer of the paying bank is precluded by U.C.C. 4–406 from making a claim against the paying bank. This may be the case, for example, if the customer failed to discover the unauthorized remotely created check in a timely manner.

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

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 21, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–23331 Filed 11–25–05; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 363

RIN 3064–AC91

Independent Audits and Reporting Requirements

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending part 363 of its regulations concerning annual independent audits and reporting requirements, which implement section 36 of the Federal Deposit Insurance Act (FDI Act), as proposed, but with modifications to the composition of the audit committee and the effective date. The FDIC's amendments raise the asset-size threshold from $500 million to $1 billion for internal control assessments by management and external auditors. For institutions between $500 million and $1 billion in assets, the amendments require the majority, rather than all, of the members of the audit committee, who must be outside directors, to be independent of management and create a hardship exemption. The amendments also make certain technical changes to part 363 to correct outdated titles, terms, and references in the regulation and its appendix. As required by section 36, the FDIC has consulted with the other federal banking agencies.

EFFECTIVE DATE: The final rule is effective December 28, 2005 and applies to part 363 annual reports with a filing deadline (90 days after the end of an institution's fiscal year) on or after the effective date of these amendments.

FOR FURTHER INFORMATION CONTACT: Harrison E. Greene, Jr., Senior Policy Analyst (Bank Accounting), Division of Supervision and Consumer Protection, at *hgreene@fdic.gov* or (202) 898–8905; or Michelle Borzillo, Counsel, Supervision and Legislation Section, Legal Division, at *mborzillo@fdic.gov* or (202) 898–7400.

SUPPLEMENTARY INFORMATION:

I. Background

Section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) added section 36, ''Early Identification of Needed Improvements in Financial Management,'' to the FDI Act (12 U.S.C. 1831m). Section 36 is generally intended to facilitate early identification of problems in financial management at insured depository institutions above a certain asset size threshold (covered institutions) through annual independent audits, assessments of the effectiveness of internal control over financial reporting and compliance with designated laws and regulations, and related requirements. Section 36 also includes requirements for audit committees at these insured depository institutions. Section 36 grants the FDIC discretion to set the asset size threshold for compliance with these statutory requirements, but it states that the threshold cannot be less than $150 million. Sections 36(d) and (f) also obligate the FDIC to consult with the other Federal banking agencies in implementing these sections of the FDI Act, and the FDIC has performed that consultation requirement.

Part 363 of the FDIC's regulations (12 CFR part 363), which implements section 36 of the FDI Act, requires each covered institution to submit to the FDIC and other appropriate Federal and state supervisory agencies an annual report that includes audited financial statements, a statement of management's responsibilities, assessments by management of the effectiveness of internal control over financial reporting and compliance with designated laws and regulations, and an auditor's attestation report on internal control over financial reporting. In addition, part 363 provides that each covered institution must establish an independent audit committee of its board of directors comprised of outside directors who are independent of management of the institution. Part 363 also includes Guidelines and Interpretations (Appendix A to part 363), which are intended to assist institutions and independent public accountants in understanding and complying with section 36 and part 363.

When it adopted part 363 in 1993, the FDIC stated that it was setting the asset size threshold at $500 million rather than the $150 million specified in section 36 to mitigate the financial burden of compliance with section 36 consistent with safety and soundness. In selecting $500 million in total assets as the size threshold, the FDIC noted that approximately 1,000 of the then nearly 14,000 FDIC-insured institutions would be subject to part 363. These covered institutions held approximately 75 percent of the assets of insured institutions at that time. By imposing the audit, reporting, and audit committee requirements of part 363 on institutions with this percentage of the industry's assets, the FDIC intended to ensure that the Congress's objectives for achieving sound financial management at insured institutions when it enacted section 36 would be focused on those

institutions posing the greatest potential risk to the insurance funds administered by the FDIC. Today, due to consolidation in the banking and thrift industry and the effects of inflation, more than 1,150 of the 8,900 insured institutions have $500 million or more in total assets and are therefore subject to part 363. These covered institutions hold approximately 90 percent of the assets of insured institutions.

II. Discussion of Proposed Amendments

On July 19, 2005, the FDIC's Board approved the publication of proposed amendments to part 363 of the FDIC's regulations, which were published in the **Federal Register** on August 2, 2005, for a 45-day comment period (70 FR 44293). The comment period closed on September 16, 2005. As more fully discussed below, the FDIC proposed to raise the asset-size threshold in part 363 from $500 million to $1 billion for internal control assessments by management and external auditors and for the members of the audit committee, who must be outside directors, to be independent of management. The FDIC also proposed to make certain technical changes to part 363 to correct outdated titles, terms, and references in the regulation and its appendix. As proposed, the effective date of these amendments was to be December 31, 2005.

In its proposal, the FDIC also noted that it had identified other aspects of part 363 that may warrant revision in light of changes in the industry and the passage of the Sarbanes-Oxley Act of 2002. However, the FDIC stated that it had decided to proceed first with the proposed amendments to the asset-size threshold in part 363 in order to reduce compliance burdens and expenses for affected institutions in 2005. These further revisions to part 363 are expected to be proposed as soon as practicable.

A. Increasing the Asset Size Threshold for Internal Control Assessments

An effective internal control structure is critical to the safety and soundness of each insured institution. Given its importance, internal control is evaluated as part of the supervision of individual institutions and its adequacy is a factor in the management rating assigned to an institution. Furthermore, in the audit of an institution's financial statements, the external auditor must obtain an understanding of internal control, including assessing control risk, and must report certain matters regarding internal control to the institution's audit committee.

An institution subject to part 363 has the added requirement that its management perform an assessment of the internal control structure and procedures for financial reporting and that its external auditor examine, attest to, and report on management's assertion concerning the institution's internal control over financial reporting. For purposes of these internal control provisions of part 363, the FDIC has advised covered institutions that the term ''financial reporting'' includes both financial statements prepared in accordance with generally accepted accounting principles and those prepared for regulatory reporting purposes.[1] Until year-end 2004, external auditors performed their internal control assessments in accordance with an attestation standard issued by the American Institute of Certified Public Accountants (AICPA) known as ''AT 501.''

The Sarbanes-Oxley Act was enacted into law on July 30, 2002. Section 404 of this Act imposes a requirement for internal control assessments by the management and external auditors of all public companies that is similar to the FDICIA requirement. The Securities and Exchange Commission's (SEC) rules implementing these requirements took effect at year-end 2004 for ''accelerated filers,'' i.e., generally, public companies whose common equity has an aggregate market value of at least $75 million, but they will not take effect until 2007 for ''non-accelerated filers.'' For the section 404 auditor attestations, the Public Company Accounting Oversight Board's (PCAOB) Auditing Standard No. 2 (AS 2) applies. AS 2 replaces the AICPA's AT 501 internal control attestation standard for public companies, but AS 2 does not apply to nonpublic companies. The SEC's section 404 rules for management and the provisions of AS 2 for section 404 audits of internal control establish more robust documentation and testing requirements than those that have been applied by covered institutions and their auditors to satisfy the internal control reporting requirements in part 363.

For internal control attestations of nonpublic companies, the AICPA is currently developing proposed revisions to AT 501 that are expected to bring it closer into line with the provisions of AS 2. The revisions also are likely to have the effect of requiring greater documentation and testing of internal control over financial reporting by an institution's management in order for the auditor to perform his or her attestation work.

As the environment has changed and continues to change since the enactment of the Sarbanes-Oxley Act, the FDIC has observed that compliance with the audit and reporting requirements of part 363 has and will continue to become more burdensome and costly, particularly for smaller nonpublic covered institutions. Thus, the FDIC reviewed the current asset size threshold for compliance with part 363 in light of the discretion granted by section 36 that permits the FDIC to determine the appropriate size threshold (at or above $150 million) at which insured institutions should be subject to the various provisions of section 36. Based on this review, the FDIC proposed to amend part 363 to increase the asset size threshold for internal control assessments by management and external auditors from $500 million to $1 billion. Raising the threshold to $1 billion would achieve meaningful burden reduction without sacrificing safety and soundness.

In reaching this decision, the FDIC concluded that raising the $500 million asset size threshold to $1 billion and exempting all institutions below this higher size level from all of the reporting requirements of part 363 would not be consistent with the objective of the underlying statute, i.e., early identification of needed improvements in financial management. In contrast, the FDIC believes that relieving smaller covered institutions from the burden of internal control assessments, while retaining the financial statement audit and other reporting requirements for all institutions with $500 million or more in total assets, strikes an appropriate balance in accomplishing this objective. By raising the size threshold for internal control assessments to $1 billion, about 600 of the largest insured institutions with approximately 86 percent of industry assets would continue to be covered by the internal control reporting requirements of part 363. At the same time, the managements of all covered institutions would remain responsible for establishing and maintaining an adequate internal control structure and procedures for financial reporting, and all institutions with $500 million or more in total assets would continue to include a statement to that effect in their part 363 annual report.

[1] See FDIC Financial Institution Letter (FIL) 86–94, dated December 23, 1994. FIL–86–94 indicates that financial statements prepared for regulatory reporting purposes encompass the schedules equivalent to the basic financial statements in an institution's appropriate regulatory report, e.g., the bank Reports of Condition and Income and the Thrift Financial Report.

B. Composition of the Audit Committee

Currently, part 363 requires each covered institution to establish an independent audit committee of its board of directors, comprised of outside directors who are independent of management of the institution. The duties of the audit committee include reviewing with management and the institutions' independent public accountant the basis for the reports included in the part 363 annual report submitted to the FDIC and other appropriate Federal and state supervisory agencies. The FDIC's Guidelines to part 363 provide that, at least annually, the board of directors of a covered institution should determine whether all existing and potential audit committee members are ''independent of management of the institution.'' The guidelines also describe factors to consider in making this determination.[2]

Section 36 provides that an appropriate federal banking agency may grant a hardship exemption to a covered institution that would permit its independent audit committee to be made up of less than all, but no fewer than a majority of, outside directors who are independent of management. To grant the exemption, the agency must find that the institution has encountered hardships in retaining and recruiting a sufficient number of competent outside directors.

Notwithstanding this exemption provision of section 36, the FDIC has observed that a number of smaller covered institutions, particularly those with few shareholders that have recently exceeded $500 million in total assets and become subject to part 363, have encountered difficulty in satisfying the independent audit committee requirement. To comply with this requirement, these institutions must identify and attract qualified individuals in their communities who would be willing to become a director and audit committee member and who would be independent of management.

To relieve this burden, but also recognizing that the FDIC has long held that individuals who serve as directors of any insured depository institution should be persons of independent judgment, the FDIC proposed to amend part 363 to increase from $500 million to $1 billion the asset size threshold for requiring audit committee members to be independent of management. Conforming changes were also proposed to be made to Guidelines 27–29 of Appendix A to part 363. Each insured depository institution with total assets of $500 million or more but less than $1 billion would continue to be required to have an audit committee comprised of outside directors. Consistent with Guideline 29 of Appendix A to part 363, an outside director would be defined as an individual who is not, and within the preceding year has not been, an officer or employee of the institution or any affiliate of the institution.

The proposed amendment to the audit committee requirements for institutions with between $500 million and $1 billion in total assets would allow an outside director who is, for example, a consultant or legal counsel to the institution, a relative of an officer or employee of the institution or its affiliates, or the owner of 10 percent or more of the stock of the institution to serve as an audit committee member. Nevertheless, the FDIC indicated in the proposal that it would encourage each institution with between $500 million and $1 billion in assets to make a reasonable good faith effort to establish an audit committee of outside directors who are independent of management.

III. Comments Received on Proposed Amendments

In response to its August 2, 2005, request for comment on the proposed amendments to part 363, the FDIC received comment letters from 28 different respondents[3]: 15 banking and thrift organizations, 7 bankers' associations, 3 accountants and accounting firms, the Conference of State Bank Supervisors (CSBS), the FDIC's Office of Inspector General (FDIC–OIG), and one other party. Generally, the comment letters expressed support for the proposed amendments. All but one of the respondents favored the proposal to increase the asset-size threshold for internal control assessments by management and external auditors to $1 billion. As for the proposed increase to $1 billion in the asset-size threshold for the members of the audit committee, who must be outside directors, to be independent of management, 24 of the 28 respondents supported this aspect of the proposal, two respondents opposed it, and two respondents did not directly comment on it. Respondents also raised a number of other issues.

The CSBS commented on the proposed change in the audit committee provisions of part 363 for institutions with $500 million to $1 billion in assets. The CSBS, on behalf of state banking departments, stated that there is value in maintaining a significant level of independence when fulfilling the important role of an audit committee member. Although it saw benefit in alleviating some of the burden of a fully independent audit committee, for safety and soundness considerations, the CSBS recommended that the chairman and a majority of the audit committee members at institutions in the $500 million to $1 billion asset size range be required to be independent of management rather than allowing all of the outside directors on the audit committee not to be independent of management.

Five other commenters concurred with the FDIC's observation that some smaller covered institutions have encountered difficulty in establishing an audit committee, all of whose members are independent of management. In this regard, the CSBS's comment letter also acknowledged the difficulties in attaining and keeping a fully independent audit committee, especially in smaller rural communities.

Individuals who serve as directors of insured institutions, whether or not they serve on the audit committee, are expected to be persons of independent judgment. In this regard, under the Uniform Financial Institutions Rating System (62 FR 752, January 6, 1997), a factor that the federal banking agencies' examiners assess when they evaluate the capability and performance of an institution's management and board of directors for purposes of assigning an appropriate Management component rating is the extent to which the management and board members are affected by, or susceptible to, dominant influence or concentration of authority. Hence, the agencies' examination staffs are cognizant of the heightened level of risk presented by the existence of a dominant officer, whether or not outside directors, including those on the audit committee, are independent of management.

After carefully considering the CSBS's recommendation, the FDIC has decided to amend the proposal to require that a majority of the audit committee members of institutions with $500 million to $1 billion in assets, all of whom must be outside directors, be independent of management. In addition, in recognition of the difficulties that some individual institutions in this size range may have in attaining such an audit committee, the final rule will provide an exemption under which an appropriate Federal banking agency may, by order or regulation, permit the audit committee of such an institution to be made up of

[2] See Guidelines 27 through 29 of Appendix A to part 363.

[3] The FDIC received 58 comment letters, which included 20 identical letters from individuals at one institution and 12 identical letters from individuals at another institution.

less than a majority of outside directors who are independent of management, if the agency determines that the institution has encountered hardships in retaining and recruiting a sufficient number of competent outside directors to serve on the audit committee of the institution. The FDIC believes that this change to its proposal strikes an appropriate balance of reducing regulatory burden without jeopardizing safety and soundness.

Another commenter who addressed the audit committee portion of the proposal suggested that the FDIC's recommendation that institutions make a ''reasonable good faith effort'' to establish an audit committee of outside directors who are independent of management was vague and should be deleted from the proposal. This commenter added that, if the recommendation were not deleted, the FDIC should include a definition of, or list of criteria that would constitute, a ''reasonable good faith effort'' and provide guidance on how an institution should document that it has undertaken such an effort. While the FDIC encourages each institution with between $500 million and $1 billion in assets to make a reasonable good faith effort to establish an audit committee comprised entirely of outside directors who are independent of management, each institution faces a unique set of circumstances when it seeks to attract competent individuals to be outside directors who would be willing to serve on its audit committee. Because a list of criteria that would constitute evidence of a ''reasonable good faith effort'' could not consider all of the situations in which institutions engaging in such a search might find themselves, the FDIC has chosen not to restrict institutions and itself to a specific list.

In its comment letter on the proposal, the FDIC–OIG recommended that insured institutions with total assets of $500 million or more, but less than $1 billion, that have or receive either a composite rating or Management component rating of 3, 4, or 5, i.e., 3 or lower, under the Uniform Financial Institutions Rating System (also known as the CAMELS rating system) be required to comply with all of the requirements of Part 363 rather than being provided the proposed relief for institutions in this size range. The FDIC–OIG indicated that, as of September 12, 2005, 16 insured institutions with $500 million to $1 billion in assets had less than a satisfactory composite CAMELS rating. Specifically, 11 institutions had a composite rating of 3 and 5 institutions had a 4 rating. The FDIC–OIG also noted that, over the last several months, 15 other insured institutions in this size range with a composite rating of 2 had a Management component rating of 3.

The FDIC–OIG indicated that, in reviewing past failures of insured institutions, it had observed that weak corporate governance, including financial reporting problems and the lack of independence of the board of directors from institution management, was often a factor in the failure of these institutions and contributed to material losses ($25 million or more) to the deposit insurance funds administered by the FDIC. The FDIC–OIG also stated that maintaining the full requirements of part 363 for less than satisfactory institutions would help to address potential concerns about deficiencies by the board of directors and in internal control, internal audit, and external audit and thereby mitigate the possibility of institution failure.

As defined in the Uniform Financial Institutions Rating System, institutions with a composite rating of 2 are fundamentally sound. There are no material supervisory concerns and, as a result, the supervisory response is informal and limited. Institutions with a composite rating of 3 exhibit some degree of supervisory concern in one or more of the six component areas (Capital Adequacy, Asset Quality, Management, Earnings, Liquidity, and Sensitivity to Market Risk). These financial institutions require more than normal supervision, which may include formal or informal enforcement actions. Failure appears unlikely, however, given the overall strength and financial capacity of these institutions. Institutions with a composite rating of 4 generally exhibit unsafe and unsound practices or conditions. There are serious financial or managerial deficiencies that result in unsatisfactory performance. Failure is a distinct possibility if the problems and weaknesses are not satisfactorily addressed and resolved. Institutions with a composite rating of 5 exhibit extremely unsafe and unsound practices or conditions and a critically deficient performance. They are of the greatest supervisory concern and ongoing supervisory attention is necessary. These institutions pose a significant risk to the deposit insurance funds and failure is highly probable.

A Management component rating of 3 indicates management and board performance that need improvement or risk management practices that are less than satisfactory given the nature of the institution's activities. The capabilities of management or the board of directors may be insufficient for the type, size, or condition of the institution. Problems and significant risks may be inadequately identified, measured, monitored, or controlled by management. Because management's ability to respond to changing circumstances and address risks is an important factor in evaluating an institution's overall risk profile and the level of supervisory attention that should be devoted to an institution, the Management component is given special consideration when assigning the institution's composite rating.

Institutions that have a composite rating of 3 or lower are already subject to increased supervisory scrutiny and are normally subject to formal or informal supervisory actions (e.g., Memorandum of Understanding or Cease and Desist Order) to address the need for corrective actions for weaknesses and deficiencies cited in reports of examination or otherwise identified through supervisory oversight. In reviewing the institutions cited in the FDIC–OIG's comment letter, the FDIC notes that all of the institutions with a composite rating of 3 or lower are subject to formal and/or informal supervisory actions and all of the institutions with a composite rating of 2 and a Management component rating of 3 or lower are subject to supervisory actions. The FDIC further notes that approximately half of these institutions are public companies or subsidiaries of public companies that are subject to the filing and reporting requirements of the Federal securities laws as implemented by the SEC.

The examination staffs of the FDIC and the other Federal banking agencies look to the assessments by management of internal control over financial reporting and the independent auditors' attestation reports on those assessments as one source of information on the existence of any significant deficiencies and material weaknesses in this internal control structure. Nevertheless, the agencies' examiners are expected to perform their own evaluation of an institution's internal control environment and audit programs when determining the condition of the institution and the need for and degree of any supervisory action. Moreover, the examiners' assessment of the internal control environment encompasses not only internal control over financial reporting, but also internal control as it relates to the effectiveness and efficiency of the institution's operations and to its compliance with laws and regulations.

The agencies' examination staffs consider many factors in determining an institution's composite rating and

individual component ratings, including the Management component. While these factors include the capability and performance of management and the board of directors (including the board's committees such as the audit committee), they also include the adequacy of, and conformance with, appropriate internal policies and controls addressing the operations and risks of significant activities; the accuracy, timeliness, and effectiveness of management information and risk monitoring systems; the adequacy of audits and internal control, including internal control over financial reporting; compliance with laws and regulations; and the overall performance of the institution and its risk profile.

As a consequence, when an institution is assigned a composite rating or a Management component rating of 3 or lower, its Federal banking agency's supervisory response, which may include formal or informal enforcement actions, is tailored to the specific weaknesses, deficiencies, and problems identified by the examination staff and seeks appropriate and timely corrective action by management and the board of directors. The factors contributing to such a less than satisfactory rating may or may not have included ineffective internal control over financial reporting and/or unacceptable audit committee oversight and performance. In this regard, although the FDIC–OIG reported in its comment letter that 15 institutions with $500 million to $1 billion in assets had recently been assigned a composite rating of 2 and a Management component rating of 3, the majority of these institutions received this Management rating for reasons unrelated to deficiencies in internal control over financial reporting (e.g., the reasons were related to compliance with the Bank Secrecy Act). Nevertheless, in those cases where examiners detect such internal control deficiencies at an institution with $500 million to $1 billion in assets, if it is deemed necessary and appropriate for addressing these deficiencies, the supervisory response by the institution's Federal banking agency could include a requirement for management to perform an assessment of internal control over financial reporting and for the external auditor to attest to management's assertion or for the external auditor to report directly on internal control over financial reporting.

Given that each institution with $500 million to $1 billion in assets with a composite rating or Management component rating of 3 or lower is receiving closer than normal supervisory attention focused on identified problem areas, imposing additional requirements for internal control assessments by management and the external auditor and for the replacement of all audit committee members who are not independent of management would levy burdens on all such institutions, regardless of whether this burden would address weaknesses identified in a given institution. However, as previously noted, the FDIC believes that, in response to comments from the CSBS, amending the proposal to require a majority of the audit committee members to be independent of management strikes an appropriate balance between reducing regulatory burden and maintaining safety and soundness.

Additionally, as a practical matter, CAMELS ratings often change during the year as a result of examination findings or other supervisory oversight. The FDIC–OIG's recommendation would subject institutions to uncertainty if the subject provisions of part 363 would apply immediately during any given year in which an institution's composite or Management component rating fell to 3 or lower. If applied in the year following receipt of the 3 or lower rating, the recommendation would often result in requiring compliance with the subject provisions of part 363 after the institution had corrected its problems and obtained a higher composite or Management rating. The first of these approaches would be difficult, at best, to plan for and implement on a timely basis, while the alternative (lagging) approach would often impose burden after (the often unrelated) problems had been addressed.

Furthermore, under the proposed amendments to part 363, each institution with $500 million to $1 billion in assets must continue to undergo an annual audit of its financial statements. In a financial statement audit, the external auditor must obtain an understanding of internal control and must report certain matters regarding internal control to the institution's audit committee. In this regard, on September 1, 2005, the AICPA Auditing Standards Board issued a proposed Statement on Auditing Standards (SAS) on the ''Communication of Internal Control Related Matters Noted in an Audit'' that will supersede its current SAS on this topic, which is known as ''SAS 60.'' The comment period for this auditing proposal ended on October 31, 2005, with the final standard expected in the first quarter of 2006. Among other things, the proposed SAS requires the auditor to communicate, in writing, to management and those charged with governance (the board of directors and/or the audit committee) significant deficiencies and material weaknesses in internal control of which the auditor becomes aware. Under current SAS 60, the auditor should report such deficiencies and weaknesses to the audit committee, preferably in writing, but oral communication of this information is also permitted. As proposed, the improved communication provisions in the SAS would be effective for audits of financial statements for periods ending on or after December 15, 2006. Part 363 requires covered institutions, regardless of size, to submit copies of reports related to their audits that are issued by their external auditors, including these written reports on significant weaknesses and material weaknesses, to the FDIC and other appropriate Federal and state supervisory agencies.

After fully considering the FDIC–OIG's comment and the agencies' supervisory tools and processes for evaluating the soundness of institutions, identifying institutions exhibiting financial and operational weaknesses or adverse trends, and focusing appropriate supervisory attention on such institutions, the FDIC has decided not to revise its proposed increase in the asset-size threshold in the manner proposed by the FDIC–OIG and accord a different treatment to institutions with $500 million to $1 billion in assets that have a composite rating or Management component rating of 3 or lower. However, the FDIC believes that the change to the composition of the audit committee that it is making in response to the comments from the CSBS, which will require a majority of the members of the audit committee, who must be outside directors, to be independent of management, will help to address the FDIC-OIG's concerns about deficiencies in the performance of the board and audit committee of institutions with less than satisfactory ratings.

Six commenters urged the FDIC to approve the proposed amendments to part 363 as soon as feasible because many procedures related to the assessment of internal control over financial reporting are addressed prior to an institution's fiscal year-end, particularly in the fourth fiscal quarter. These commenters further recommended that the FDIC either change the effective date of the amendments from December 31, 2005, as proposed, to September 30, 2005, or grant an institution's primary Federal regulator the authority to waive the 2005 internal control assessment requirements for institutions with total assets of $500 million or more but less

than $1 billion that have fiscal year-ends other than December 31. The FDIC concurs with these commenters' suggestion concerning the effective date and, in response, is changing the effective date of the amendments to part 363 from December 31, 2005, to December 28, 2005. The final rule will apply to part 363 annual reports with a filing deadline (90 days after the end of an institution's fiscal year) on or after the effective date of these amendments.

Four commenters recommended that the $1 billion asset-size threshold be tied to an index that would automatically increase the threshold annually. For reasons of practicality and to provide certainty to institutions concerning the size at which full compliance with part 363 is required, the FDIC has decided not to adopt this indexing recommendation.

The FDIC also received several recommendations from commenters that are outside the scope of the proposed amendments to part 363 and, accordingly, the FDIC has decided not to implement these recommendations as part of the final rule. These comments included the following: (1) Increase the asset size threshold for applying the SEC independence rules to external auditors, (2) have the FDIC adopt its own independence rules for external auditors, (3) enhance the FDIC's review of external audit reports, (4) make the standards for performing audits of internal control over financial reporting the same for both public and non-public companies, and (5) establish a fraud hotline for both examiners and bank employees.

IV. Final Rule

The FDIC has considered the comments received on its proposed amendments to part 363 and is adopting the amendments as proposed, but with modifications to the composition of the audit committee and the effective date. This final rule raises the asset-size threshold from $500 million to $1 billion for internal control assessments by management and external auditors. For institutions between $500 million and $1 billion in assets, it also requires the majority, rather than all, of the members of the audit committee, who must be outside directors, to be independent of management and creates a hardship exemption. In addition, the final rule makes certain technical changes to part 363 to correct outdated titles, terms, and references in the regulation and its appendix.

This final rule takes effect December 28, 2005, not on December 31, 2005, as proposed, and it applies to part 363 annual reports with a filing deadline [4] on or after the rule's effective date. For example, for insured institutions (both public and non-public) with fiscal years that ended on September 30, 2005, or that will end on December 31, 2005, that had $500 million or more in total assets, but less than $1 billion in total assets, at the beginning of the fiscal year, the final rule means that the part 363 annual report that these institutions must submit to the FDIC and other appropriate Federal and state supervisory agencies within 90 days after the end of the fiscal year needs to include only audited financial statements, statements of management's responsibilities, management's assessment of the institution's compliance with designated laws and regulations, and an auditor's report on the financial statements.

For insured depository institutions that are public companies or subsidiaries of public companies, regardless of size, the FDIC's amendments to part 363 do not relieve public companies of their obligation to comply with the internal control assessment requirements imposed by section 404 of the Sarbanes-Oxley Act in accordance with the effective dates for compliance set forth in the SEC's implementing rules.

Nevertheless, the FDIC reminds insured institutions with $1 billion or more in total assets that are public companies or subsidiaries of public companies that they have considerable flexibility in determining how best to satisfy the internal control assessment requirements in the SEC's section 404 rules and the FDIC's part 363. As indicated in the preamble to the SEC's section 404 final rule release, the FDIC (and the other Federal banking agencies) agreed with the SEC that insured depository institutions that are subject to both part 363 (as well as holding companies permitted under the holding company exception in part 363 to file an internal control report on behalf of their insured depository institution subsidiaries) and the SEC's rules implementing section 404 can choose either of the following two options:

- They can prepare two separate reports of management on the institution's or the holding company's internal control over financial reporting to satisfy the FDIC's part 363 requirements and the SEC's section 404 requirements; or
- They can prepare a single report of management on internal control over financial reporting that satisfies both the FDIC's requirements and the SEC's requirements.[5]

For more complete information on these two options, institutions (and holding companies) should refer to section II.H.4. of the preamble to the SEC's section 404 final rule release (68 FR 36648, June 18, 2003).

Paperwork Reduction Act

This regulation contains modifications to a collection of information that have been reviewed and approved by the Office of Management and Budget under control number 3064–0113, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The primary modification increases the asset size threshold for compliance with certain reporting requirements in part 363.

The estimated reporting burden for the collection of information under part 363 is 65,612 hours per year.

Number of Respondents: 5,243.

Total Annual Responses: 15,684.

Total Annual Burden Hours: 65,612.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires that each Federal agency either certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the proposal and publish the analysis for comment. See 5 U.S.C. 603, 605. The Small Business Administration (SBA) defines small banks as those with less than $150 million in assets. Because this rule expressly exempts insured depository institutions having assets of less than $500 million, it is inapplicable to small entities as defined by the SBA. Therefore, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities.

[4] Under section 363.4(a), an institution's filing deadline is 90 days after the end of the institution's fiscal year.

[5] Footnote 117 in the preamble to the SEC's section 404 final rule releases states that ''[a]n insured depository institution subject to both the FDIC's [internal control assessment] requirements and our new requirements [i.e., a public depository institution] choosing to file a single report to satisfy both sets of requirements will file the report with its primary Federal regulator under the Exchange Act and the FDIC, its primary Federal regulator (if other than the FDIC), and any appropriate state depository institution supervisor under part 363 of the FDIC's regulations. A [public] holding company choosing to prepare a single report to satisfy both sets of requirements will file the report with the [Securities and Exchange] Commission under the Exchange Act and the FDIC, the primary Federal regulator of the insured depository institution subsidiary subject to the FDIC's requirements, and any appropriate state depository institution supervisor under part 363.''

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title II, Pub. L. 104–121) provides generally for agencies to report rules to Congress and the General Accounting Office (GAO) for review. The reporting requirement is triggered when a Federal agency issues a final rule. The FDIC will file the appropriate reports with Congress and the GAO as required by SBREFA. The Office of Management and Budget has determined that the rule does not constitute a ''major rule'' as defined by SBREFA.

List of Subjects in 12 CFR Part 363

Accounting, Administrative practice and procedure, Banks, Banking, Reporting and recording keeping requirements.

■ For the reasons set forth in the preamble, the Board of Directors of the FDIC hereby amends part 363 of title 12, chapter III, of the Code of Federal Regulations as follows:

PART 363—ANNUAL INDEPENDENT AUDITS AND REPORTING REQUIREMENTS

■ 1. The authority citation for part 363 continues to be read as follows:

Authority: 12 U.S.C. 1831m.

■ 2. Section 363.1 is amended by revising paragraph (b)(2)(ii)(B) to read as follows:

§ 363.1 Scope.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) Total assets of $5 billion or more and a composite CAMELS rating of 1 or 2.

* * * * *

■ 3. Section 363.2(b) is amended by revising paragraph (b)(2) and adding paragraph (b)(3) to read as follows:

§ 363.2 Annual reporting requirements.

* * * * *

(b) * * *

(2) An assessment by management of the institution's compliance with such laws and regulations during such fiscal year; and

(3) For an institution with total assets of $1 billion or more at the beginning of such fiscal year, an assessment by management of the effectiveness of such internal control structure and procedures as of the end of such fiscal year.

■ 4. Section 363.3 is amended by revising paragraph (b) to read as follows:

§ 363.3 Independent public accountant.

* * * * *

(b) *Additional reports.* For each insured depository institution with total assets of $1 billion or more at the beginning of the institution's fiscal year, such independent public accountant shall examine, attest to, and report separately on, the assertion of management concerning the institution's internal control structure and procedures for financial reporting. The attestation shall be made in accordance with generally accepted standards for attestation engagements.

* * * * *

■ 5. Section 363.5 is amended by revising paragraph (a) to read as follows:

§ 363.5 Audit committees.

(a) *Composition and duties.* Each insured depository institution shall establish an audit committee of its board of directors, the composition of which complies with paragraphs (a)(1), (2), and (3) of this section, and the duties of which shall include reviewing with management and the independent public accountant the basis for the reports issued under this part.

(1) Each insured depository institution with total assets of $1 billion or more as of the beginning of its fiscal year shall establish an independent audit committee of its board of directors, the members of which shall be outside directors who are independent of management of the institution.

(2) Each insured depository institution with total assets of $500 million or more but less than $1 billion as of the beginning of its fiscal year shall establish an audit committee of its board of directors, the members of which shall be outside directors, the majority of whom shall be independent of management of the institution. The appropriate Federal banking agency may, by order or regulation, permit the audit committee of such an insured depository institution to be made up of less than a majority of outside directors who are independent of management, if the agency determines that the institution has encountered hardships in retaining and recruiting a sufficient number of competent outside directors to serve on the audit committee of the institution.

(3) An outside director is a director who is not, and within the preceding fiscal year has not been, an officer or employee of the institution or any affiliate of the institution.

* * * * *

■ 6. Appendix A to part 363 is amended as follows:

■ a. Footnote 2, Guideline 10, is amended by adding ''Risk Management'' after ''FDIC's Division of Supervision and Consumer Protection (DSC)'';

■ b. Guideline 16 is amended by removing ''Registration and Disclosure Section'' and adding in its place ''Accounting and Securities Disclosure Section'';

■ c. Guideline 22 is amended by revising the first sentence of paragraph (a) to read as set forth below;

■ d. Guideline 27 is amended by revising the second sentence to read as set forth below;

■ e. Guideline 28 is amended by revising paragraph (a) to read as set forth below;

■ f. Guideline 29 is revised to read as set forth below; and

■ g. The first sentence of Guideline 36 is revised to read as set forth below.

The revisions read as follows:

Appendix A to Part 363—Guidelines and Interpretations

* * * * *

Filing and Notice Requirements (§ 363.4)

22. * * *

(a) FDIC: Appropriate FDIC Regional or Area Office (Supervision and Consumer Protection), i.e., the FDIC regional or area office in the FDIC region or area that is responsible for monitoring the institution or, in the case of a subsidiary institution of a holding company, the consolidated company. * * *

* * * * *

Audit Committees (§ 363.5)

27. * * * At least annually, the board of an institution with $1 billion or more in total assets at the beginning of its fiscal year should determine whether all existing and potential audit committee members are ''independent of management of the institution'' and the board of an institution with total assets of $500 million or more but less than $1 billion as of the beginning of its fiscal year should determine whether the majority of all existing and potential audit committee members are ''independent of management of the institution.'' * * *

28. * * *

(a) Has previously been an officer of the institution or any affiliate of the institution;

* * * * *

29. *Lack of independence.* An outside director should not be considered independent of management if such director owns or controls, or has owned or controlled within the preceding fiscal year, assets representing 10 percent or more of any outstanding class of voting securities of the institution.

* * * * *

Other

36. *Modifications of guidelines.* The FDIC's Board of Directors has delegated to the

Director of the FDIC's Division of Supervision and Consumer Protection (DSC) authority to make and publish in the **Federal Register** minor technical amendments to the Guidelines in this appendix, in consultation with the other appropriate federal banking agencies, to reflect the practical experience gained from implementation of this part.* * *

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 8th day of November, 2005.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–23310 Filed 11–25–05; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15471; Airspace Docket No. 03–AWA–6]

RIN 2120–AA66

Modification of the Minneapolis Class B Airspace Area; MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the current Minneapolis, MN, Class B airspace area to contain large turbine-powered aircraft during operations to the new Runway 17/35 and to address an increase in aircraft operations to and from the Minneapolis-St. Paul International (Wold-Chamberlain) Airport (MSP). The FAA is taking this action to enhance safety and improve the management of aircraft operations in the Minneapolis terminal area. Further, this action supports the FAA's national airspace redesign goal of optimizing terminal and en route airspace areas to reduce aircraft delays and improve system capacity.

DATES: *Effective Date:* 0901 UTC, February 16, 2006.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On November 24, 2003, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify the Minneapolis Class B airspace area (68 FR 65859). The FAA proposed the action due to a significant growth in aircraft operations and the construction of a new runway (Runway 17/35) to accommodate the growth. The proposed modifications were designed to contain large turbine-powered aircraft within the MSP Class B airspace area and included expanding the lateral dimensions of the existing MSP Class B airspace area as well as increasing the vertical limits from 8,000 feet above mean sea level (MSL) to 10,000 feet MSL.

Subsequent to the issuance of the NPRM, the FAA's further analysis of airspace requirements revealed that additional airspace (beyond and below that airspace proposed in the NPRM) will be needed to contain large turbine'powered aircraft conducting approaches to the new Runway 35 within the MSP Class B airspace area. To provide the public an opportunity to comment on the additional required airspace, the FAA issued a supplemental notice of proposed rulemaking (SNPRM) that included a new area F (70 FR 43803). Area F reflects the additional airspace that the FAA determined will be needed, as well as changes suggested by the Air Line Pilots Association, International (ALPA) and the National Business Aviation Association, Inc. (NBAA) in response to the NPRM (see ''Discussion of Comment'' below).

Discussion of Comments

In response to the NPRM, the FAA received three comments.

The Aircraft Owners and Pilots Association (AOPA) expressed a concern that the dimensions of the MSP Class B airspace area should conform to the unique needs of users rather than conform to a national standard. They also expressed a concern that raising the vertical limits from 8,000 feet MSL to 10,000 feet MSL would ''pose a serious operational limitation to pilots wishing to over fly'' the MSP Class B airspace area. AOPA also expressed a desire for charted visual flight rules (VFR) flyways in the MSP terminal area.

The FAA has determined that some aircraft may have to fly farther or at lower or higher altitudes to remain clear of the modified MSP Class B airspace area; however, this is necessary to separate them from large turbine-powered aircraft arriving and departing MSP. The management of aircraft operations to the new runway will require several new arrival vector areas between the altitudes of 7,000 feet and 10,000 feet MSL over the MSP terminal area. Specifically, aircraft that currently proceed directly to MSP and then enter an east/west downwind pattern will be vectored to a downwind pattern via northbound and southbound paths located to the east and west of MSP. This change in traffic flow is needed to accommodate three arrival streams rather than the current practice of using two arrival streams. As a result of these new procedures, approximately 900 high-performance aircraft will be vectored to join arrival streams as far as 30 nautical miles (NM) from MSP between the altitudes of 7,000 and 10,000 feet MSL on a daily basis.

In response to AOPA's comment pertaining to VFR flyways, the FAA agrees that charted VFR flyways could minimize the impact on aircraft that choose to circumnavigate the MSP Class B airspace area. However, because VFR flyways are not addressed in a Class B rulemaking action, the FAA plans to develop and institute VFR flyways for the MSP terminal area through a separate, non-rulemaking process.

ALPA and the NBAA expressed concern that the ''southeast cut-out'' of the proposed Area E would result in aircraft not being contained in Class B airspace when operating on the extended final approach course to the new Runway 35. They suggest reducing the size of the cut-out by changing the western boundary of the proposed cut-out from the Gopher 170 radial to the Gopher 160 radial. The FAA agrees with this comment and has adopted the suggested modification.

The FAA received the following comments in response to the SNPRM:

AOPA again expressed a concern that raising the vertical limits of the MSP Class B airspace area from 8,000 feet MSL to 10,000 feet MSL would ''pose a serious operational limitation to those pilots wishing to over fly'' the MSP Class B airspace area and reiterated their desire for charted VFR flyways. They also mentioned that the ad hoc committee recommendations did not fully address their concerns. The FAA's response to AOPA's comments remains as stated previously in this document.

The FAA also received comments from two pilots in response to the SNPRM. They commented that they practice aerobatic maneuvers at and below 8,000 feet MSL approximately 15 NM west of the Flying Cloud Airport (between the cities of Belle Plaine and Cologne). They request that the FAA exclude the area that they practice in from the MSP Class B airspace area. While the FAA acknowledges that aerobatic operations in the area may be impacted, the FAA is not able to accommodate this request because the area between Belle Plaine and Cologne

lies within the vector area for aircraft arriving MSP via a standard terminal arrival route from the southwest. Aircraft using this arrival route will operate as low as 7,000 feet MSL over the area between Belle Plaine and Cologne (approximately 25 to 28 NM west-southwest of MSP).

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class B airspace area listed in this document would be published subsequently in the order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying the MSP Class B airspace area. Specifically, this action (depicted on the attached chart) expands the upper limits of Areas A, B, C, and D from 8,000 feet MSL to and including 10,000 feet MSL; expands the lateral limits of Area D to the northwest and southeast of MSP; adds an Area E within 30 NM of the I-MSP DME (excluding areas to the north and south of MSP); and adds an area F to the south of MSP.

The FAA is taking this action to provide protection for the increased operations at MSP including operations to the new Runway 17/35. Additionally, this action enhances safety, improves the management of aircraft operations in the MSP terminal area, and supports the FAA's national airspace redesign goal of optimizing terminal and en route airspace areas to reduce aircraft delays and improve system capacity.

Regulatory Evaluation Summary

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 requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this final rule: (1) Will generate benefits that justify its circumnavigation costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

This final rule will modify the Minneapolis, MN, Class B airspace area. The final rule will reconfigure the sub-area lateral boundaries, and raise the altitude ceiling in certain segments of the airspace.

The final rule will generate benefits for system users and the FAA in the form of enhanced operational efficiency and simplified navigation in the MSP terminal area. These modifications will impose some circumnavigation costs on operators of non-compliant aircraft operating in the area around MSP. However, the cost of circumnavigation is considered to be small. Thus, the FAA has determined this final rule will be cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

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 1980 Act provides that the head of the agency may so certify and an RFA 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 may impose some circumnavigation costs on individuals operating in the Minneapolis terminal area, but the final rule will not impose any costs on small business entities. Operators of general aviation aircraft are not considered small business entities. As such, they are not included when performing a regulatory flexibility analysis. Flight schools are considered small business entities. However, the FAA assumes that they provide instruction in aircraft equipped to navigate in Class B airspace given they currently provide instruction in the Minneapolis terminal area. Therefore, these small entities should not incur any additional costs as a result of the final rule. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States (U.S.). 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 final rule will only have a domestic impact and will not affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the U.S.

Unfunded Mandates Assessment

The Unfunded Mandate 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. 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 3000—Class B Airspace.

* * * * *

AGL MN B Minneapolis, MN [Revised]

Minneapolis-St. Paul International (Wold-Chamberlain) Airport (Primary Airport)
(Lat. 44°53′00″ N., long. 93°13′01″ W.)
Gopher VORTAC
(Lat. 45°08′45″ N., long. 93°22′24″ W.)
Flying Cloud VOR/DME
(Lat. 44°49′33″ N., long. 93°27′24″ W.)
Minneapolis-St. Paul International (Wold-Chamberlain) Airport DME Antenna (I–MSP DME)
(Lat. 44°52′28″ N., long. 93°12′24″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within a 6-mile radius of the I–MSP DME.

Area B. That airspace extending from 2,300 feet MSL to and including 10,000 feet MSL within an 8.5-mile radius of the I–MSP DME, excluding Area A previously described.

Area C. That airspace extending from 3,000 feet MSL to and including 10,000 feet MSL within a 12-mile radius of the I–MSP DME, excluding Area A and Area B previously described.

Area D. That airspace extending from 4,000 feet MSL to and including 10,000 feet MSL within a 20-mile radius of the I–MSP DME and including that airspace within a 30-mile radius from the Flying Cloud 295° radial clockwise to the Gopher 295° radial and from the Gopher 115° radial clockwise to the Flying Cloud 115° radial, excluding Area A, Area B, and Area C previously described.

Area E. That airspace extending from 7,000 feet MSL to and including 10,000 feet MSL within a 30-mile radius of the I–MSP DME from the Gopher 295° radial clockwise to the Gopher 352° radial, and from the Gopher 085° radial clockwise to the Gopher 115° radial, and from the Flying Cloud 115° radial clockwise to the Gopher 160° radial, and from the Gopher 170° radial clockwise to the Flying Cloud 295° radial excluding that airspace between a 25-mile radius and a 30-mile radius of the I–MSP DME from the Flying Cloud 115° radial clockwise to the Gopher 160° radial, and excluding Area A, Area B, Area C, and Area D previously described.

Area F. That airspace extending from 6,000 feet MSL to and including 10,000 feet MSL within a 30-mile radius of the I–MSP DME from the Gopher 160° radial clockwise to the Gopher 170° radial, excluding Area A, Area B, Area C, and Area D previously described.

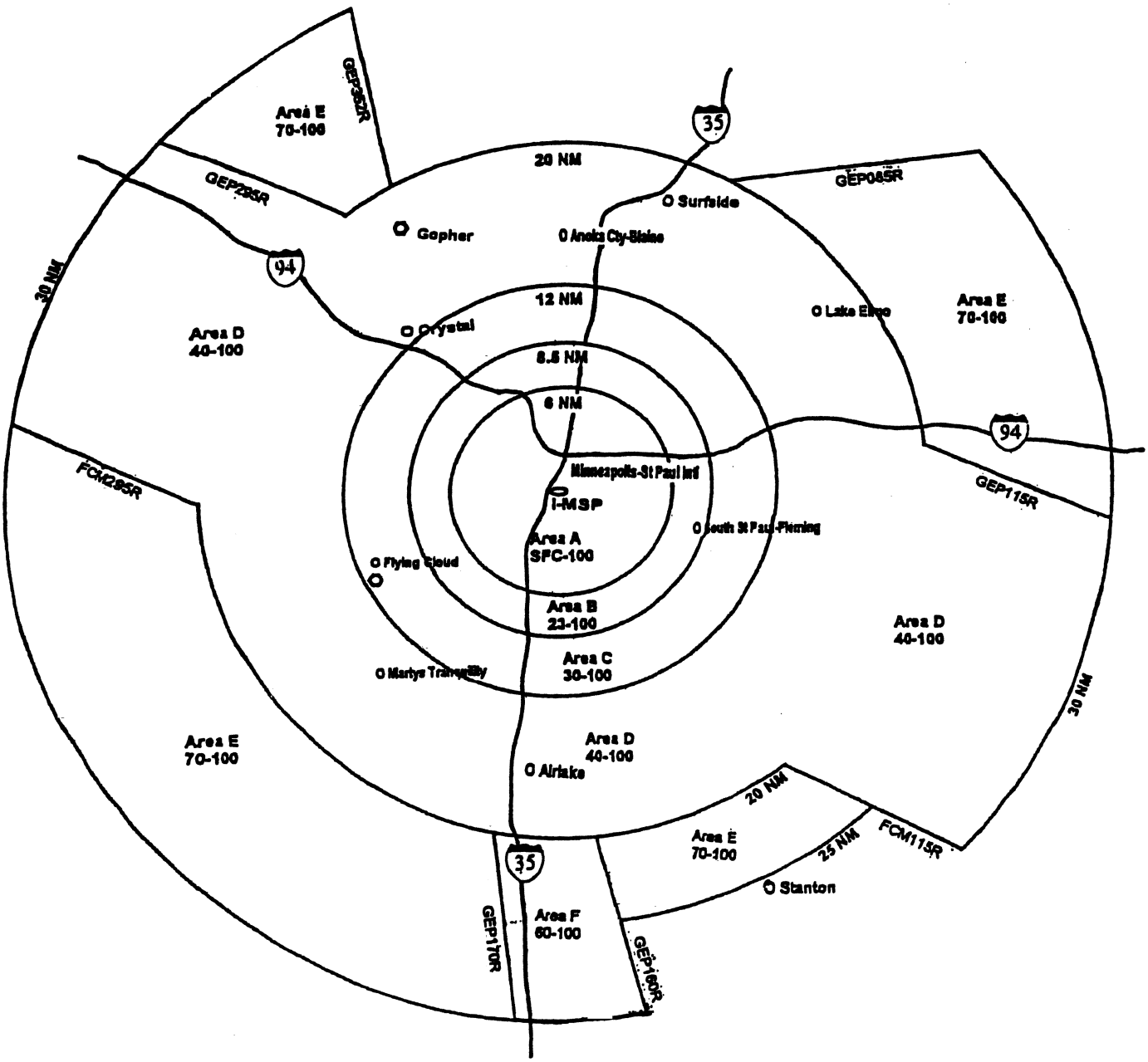
* * * * *

Issued in Washington, DC, on November 16, 2005.

Edith V. Parish,

Manager, Airspace and Rules.

BILLING CODE 4910–13–P



Minneapolis Class B Expansion.

[FR Doc. 05–23308 Filed 11–25–05; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22399; Airspace Docket No. 05–AAL–27]

RIN 2120–AA66

Modification of the Norton Sound Low Offshore Airspace Area; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Norton Sound Low airspace area, AK. Specifically, this action modifies the Norton Sound Low airspace area in the vicinity of the Deering Airport, AK, by lowering the controlled airspace floor to 1,200 feet mean sea level (MSL) and expanding the area to a 45-nautical mile (NM) radius of the airport. The FAA is taking this action to provide additional controlled airspace for aircraft instrument operations at the Deering Airport.

EFFECTIVE DATE: 0901 UTC, February 16, 2006.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On September 21, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify the Norton Sound Low Offshore Airspace Area in Alaska (70 FR 55325). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received. A review of the airspace configuration at Nome, Alaska, revealed that an exclusion for the Nome Class E airspace was not needed; this resulted in a minor change to the legal description of the Norton Sound Low area, which removed the exclusion for the Nome, Alaska, Class E airspace.

Norton Sound Low airspace areas are published in paragraph 6007 of FAA Order 7400.9N dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Norton Sound Low airspace area listed in this document will be published subsequently in the order.

The Rule

This action amends to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify the Norton Sound Low airspace area, AK, by lowering the floor to 1,200 feet MSL within a 45-NM radius of Deering Airport, AK. This action establishes controlled airspace to support instrument flight rules operations at Deering Airport. The FAA Instrument Flight Procedures Production and Maintenance Branch has developed four new instrument approach procedures for the Deering Airport. New controlled airspace extending upward from 1,200 feet MSL above the surface in international airspace is created by this action.

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

ICAO Considerations

As part of this action relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace & Rules, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty.

A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9N, Airspace Designations and Reporting

Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 6007—Offshore Airspace Areas.

* * * * *

Norton Sound Low, AK [Amended]

That airspace extending upward from 1,200 MSL within a 45-mile radius of the Deering Airport, Alaska, and airspace extending upward from 14,500 feet MSL within an area bounded by a line beginning at Lat. 59°59′57″ N., long. 168°00′08″ W.; to Lat. 62°35′00″ N., long. 175°00′00″ W.; to Lat. 65°00′00″ N., long. 168°58′23″ W.; to Lat. 68°00′00″ N., long. 168°58′23″ W.; to a point 12 miles offshore at Lat. 68°00′00″ N.; thence by a line 12 miles from and parallel to the shoreline to Lat. 56°42′59″ N., long. 160°00′00″ W.; to Lat. 58°06′57″ N., long. 160°00′00″ W.; to Lat. 57°45′57″ N., long. 161°46′08″ W.; to the point of beginning, excluding that portion that lies within Class E airspace above 14,500 feet MSL, Federal airways and the Nome and Kotzebue, AK, Class E airspace areas.

* * * * *

Issued in Washington, DC, on November 17, 2005.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 05–23306 Filed 11–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 050726200–5305–2]

RIN 0691–AA58

Direct Investment Surveys: BE–11, Annual Survey of U.S. Direct Investment Abroad

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations of the U.S. Department of Commerce, Bureau of Economic Analysis (BEA), for the BE–11, Annual Survey of U.S. Direct Investment Abroad.

The BE–11 survey is conducted annually and is a sample survey that obtains financial and operating data covering the overall operations of nonbank U.S. parent companies and their nonbank foreign affiliates. To address the current needs of data users while at the same time keeping the respondent burden as low as possible, BEA is modifying, adding, or deleting items on the survey forms and in the reporting criteria. Most of the changes will bring the BE–11 forms and related instructions into conformity with the 2004 BE–10, Benchmark Survey of U.S. Direct Investment Abroad.

DATES: This final rule will be effective December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Obie G. Whichard, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9890 or e-mail (*obie.whichard@bea.gov*).

SUPPLEMENTARY INFORMATION: In the August 22, 2005, **Federal Register**, 70 FR 48920–48923, BEA published a notice of proposed rulemaking setting forth revised reporting requirements for the BE–11, Annual Survey of U.S. Direct Investment Abroad. No comments on the proposed rule were received. Thus, the proposed rule is adopted without change. This final rule amends 15 CFR 806.14 to set forth the reporting requirements for the BE–11, Annual Survey of U.S. Direct Investment Abroad.

Description of Changes

The BE–11, Annual Survey of U.S. Direct Investment Abroad, is a mandatory survey and is conducted annually by BEA under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, the Act. BEA will send the survey to potential respondents in March of each year; responses will be due by May 31.

This final rule: (1) Increases the exemption level for reporting on the BE–11B(SF) form and BE–11C form from $30 million to $40 million; (2) increases the exemption level for reporting on the BE–11B(LF) form from $100 million to $150 million; and (3) increases the exemption level for reporting only selected items on Form BE–11A from $100 million to $150 million. In addition to certain identification items, U.S. Reporters with total assets, sales or gross operating revenues, and net income (loss) less than or equal to $150 million report only selected items on the BE–11A report. In conjunction with the increase in the exemption level for reporting on Forms BE–11B(SF) and BE–11C, a schedule on Form BE–11A is introduced for reporting a few data items for affiliates with assets, sales, and net income between $10 million and $40 million that were established or acquired during the year. The foreign affiliate exemption level is the level of a foreign affiliate's assets, sales, or net income below which a Form BE–11B(LF), BE–11B(SF), or BE–11C is not required.

In addition to the changes in reporting criteria mentioned above, BEA is introducing a statistical sampling procedure that utilizes a new BE–11B(EZ) form. This form provides a few basic indicators for non-sample foreign affiliates that can be used as a basis for estimating data that otherwise would have to be reported on the lengthier BE–11B(LF) and BE–11B(SF) forms.

BEA is introducing a few changes to the report forms themselves. BEA is adding questions to the BE–11A form, BE–11B(LF) form, and BE–11B(SF) form to bring the annual survey into conformity with the BE–10 benchmark survey. BEA is collecting detail on: (1) The broad occupational structure of employment, (2) premiums earned and claims paid by U.S. Reporters and foreign affiliates operating in the insurance industry, and (3) goods purchased for resale for U.S. Reporters and foreign affiliates operating in the wholesale and retail trade industries. In addition, BEA is expanding the ownership section on the BE–11B(LF) and (SF) forms to include components that are collected on the benchmark survey and to add a retained earnings reconciliation section on the BE–11B(LF) form similar to that on the benchmark survey.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, the Act. Section 4(a) of the Act requires that with respect to United States direct investment abroad, the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information on international financial flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States.

In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns direct investment to the Secretary of Commerce, who has redelegated it to BEA. The annual survey of U.S. direct investment abroad is a sample survey that provides a variety of measures of the overall operations of U.S. parent

companies and their foreign affiliates, including total assets, sales, net income, employment and employee compensation, research and development expenditures, and exports and imports of goods. The sample data are used to derive universe estimates in nonbenchmark years from similar data reported in the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, which is taken every five years. The data are needed to measure the size and economic significance of direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies. The data are disaggregated by country and industry of the foreign affiliate and by industry of the U.S. parent.

Executive Order 12866

This final rule has been determined not to be significant for purposes of E.O. 12866.

Executive Order 13132

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

The collection-of-information required in this final rule has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

Notwithstanding any other provisions of the 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 unless that collection displays a currently valid OMB control number. The OMB control number for the BE–11 is 0608–0053; the collection will display the number.

The survey is expected to result in the filing of reports from approximately 1,500 respondents. The respondent burden for this collection of information will vary from one company to another, but is estimated to average 78.4 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total respondent burden of the survey is estimated at 117,600 hours (1,500 respondents times 78.4 hours average burden).

Comments regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230 (Fax: 202–606–5311); and Office of Management andBudget, O.I.R.A., Paperwork Reduction Project 0608–0053, Attention PRA Desk Officer for BEA, via the Internet at *pbugg@omb.eop.gov,* or by Fax at 202–395–7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding the economic impact of the rule. As a result, no final regulatory flexibility analysis was prepared.

List of Subjects in 15 CFR Part 806

U.S. investment abroad, Multinational corporations, Economic statistics, Penalties, Reporting and recordkeeping requirements.

Dated: November 14, 2005.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

■ For the reasons set forth in the preamble, BEA is amending 15 CFR Part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

■ 1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp., p. 173); E.O. 12518 (3 CFR, 1985 Comp., p. 348).

■ 2. Section 806.14(f)(3) is revised to read as follows:

§ 806.14 U.S. direct investment abroad.

* * * * *

(f) * * *

(3) BE–11—Annual survey of U.S. Direct Investment Abroad: A report, consisting of Form BE–11A and Form(s) BE–11B(LF) (Long Form), BE–11B(SF) (Short Form), BE–11B(EZ), and/or BE–11C, is required of each nonbank U.S. Reporter that, at the end of the Reporter's fiscal year, had a nonbank foreign affiliate reportable on Form BE–11B(LF), (SF), (EZ), or BE–11C. Forms required and the criteria for reporting on each are as follows:

(i) Form BE–11A (Report for U.S. Reporter) must be filed by each nonbank U.S. person having a foreign affiliate reportable on Form BE–11B(LF), (SF), (EZ), or BE–11C. If the U.S. Reporter is a corporation, Form BE–11A is required to cover the fully consolidated U.S. domestic business enterprise. However, where a U.S. Reporter's primary line of business is not in banking (or related financial activities), but the Reporter also has ownership in a bank, banking activities should be included on the BE–11A using the equity method of accounting.

(A) If for a nonbank U.S. Reporter any one of the following three items total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes was greater than $150 million (positive or negative) at the end of, or for, the Reporter's fiscal year, the U.S. Reporter must file a complete Form BE–11A. It must also file a Form BE–11B(LF), (SF), (EZ), or BE–11C as applicable, for each nonexempt foreign affiliate.

(B) If for a nonbank U.S. Reporter no one of the three items listed in paragraph (f)(3)(i)(A) of this section was greater than $150 million (positive or negative) at the end of, or for, the Reporters fiscal year, the U.S. Reporter is required to file on Form BE–11A only items 1 through 27 and Part IV. It must also file a Form BE–11B(LF), (SF), (EZ), or BE–11C as applicable, for each nonexempt foreign affiliate.

(ii) Forms BE–11B(LF), (SF), and (EZ) (Report for Majority-owned Foreign Affiliate).

(A) A BE–11B(LF) (Long Form) is required to be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes was greater than $150 million (positive or negative) at the end of, or for, the affiliate's fiscal year, unless the nonbank foreign affiliate is selected to be reported on Form BE–11B(EZ).

(B) BE–11B(SF) (Short Form) is required to be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $40 million (positive or negative), but for which no one of these items was greater than $150 million (positive or negative), at the end of, or for, the affiliate's fiscal year, unless the nonbank foreign affiliate is selected to be reported on Form BE–11B(EZ).

(C) A BE–11B(EZ) is required be filed for each nonbank foreign affiliate that is selected to be reported on this form in

lieu of Form BE–11B(LF) or Form BE–11B(SF).

(iii) Form BE–11C (Report for Minority-owned Foreign Affiliate) must be filed for each minority-owned nonbank foreign affiliate that is owned at least 20 percent, but not more than 50 percent, directly and/or indirectly, by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $40 million (positive or negative) at the end of, or for, the affiliate's fiscal year. In addition, for the report covering fiscal year 2007 only, a Form BE–11C must be filed for each minority-owned nonbank foreign affiliate that is owned, directly or indirectly, at least 10 percent by one U.S. Reporter, but less than 20 percent by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $100 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(iv) Based on the preceding, an affiliate is exempt from being reported if it meets any one of the following criteria:

(A) None of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds $40 million (positive or negative). (However, affiliates that were established or acquired during the year and for which at least one of these items was greater than $10 million but not over $40 million must be listed, and key data items reported, on a supplement schedule on Form BE–11A.)

(B) For fiscal year 2007 only, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined and none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds $100 million (positive or negative).

(C) For fiscal years other than 2007, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined.

(D) Its U.S. parent (U.S. Reporter) is a bank.

(E) It is itself a bank.

(v) Notwithstanding paragraph (f)(3)(iv) of this section, a Form BE–11B(LF), (SF), (EZ) or BE–11C must be filed for a foreign affiliate of the U.S. Reporter that owns another non-exempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt. That is, all affiliates upward in the chain of ownership must be reported.

* * * * *

[FR Doc. 05–23316 Filed 11–25–05; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[ND–048–FOR, Amendment No. XXXV]

North Dakota Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the North Dakota regulatory program (the ''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota proposed revisions to its statute which reduce notice requirements associated with bond release applications. North Dakota intends to revise its program to improve operational efficiency.

EFFECTIVE DATE: November 28, 2005.

FOR FURTHER INFORMATION CONTACT: Acting Field Office Director Frank Atencio, Telephone: 307/261–6550, e-mail address: *fatencio@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSM) Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.15, 934.16, and 934.30.

II. Submission of the Proposed Amendment

By letter dated April 20, 2005, North Dakota sent us an amendment to its program (amendment number XXXV, Administrative Record No. ND–JJ–01) under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment includes changes made at the State's initiative. The provisions of its North Dakota Century Code (NDCC) that North Dakota proposed to revise are NDCC 38–14.1–17.1.a and b, Release of performance bond '' Schedule—Notification—Public hearing.

We announced receipt of the proposed amendment in the July 5, 2005, **Federal Register** (70 FR 38639), Administrative Record No. ND–JJ–07. In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 4, 2005. We received one comment from the North Dakota State University.

III. OSM's Findings

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

A. Minor Revisions to North Dakota's Statute

North Dakota proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved statute: NDCC 38–14.1–17.1.a and b.

Because these changes are minor, we find that they will not make North Dakota's statute less stringent than SMCRA.

B. Revisions to North Dakota's Statute That Have the Same Meaning as the Corresponding Provisions of SMCRA

The following revisions to the NDCC proposed by North Dakota contain language that is the same as or similar to the corresponding sections of SMCRA.

NDCC 38–14.1–17.1.a and b (SMCRA 519(a)), [Release of performance bond-Schedule-Notification-Public hearing]

The first change deletes the requirement that the permittee publish newspaper notices in daily newspapers of general circulation in the mine's locality. However, the permittee is still required to publish bond release

notices, once a week for four consecutive weeks, in the official county newspaper where the bond release tract is located. SMCRA requires that the bond release notice be published in a newspaper of general circulation in the locality of the mine. The publication of the notice in the official county newspaper where the bond release is located is consistent with that provision.

The second change in this amendment deletes the language that requires the permittee to send bond release notices to subsurface owners of tracts proposed for bond release. Mining companies will still be required to send bond release notices to surface owners of the bond release tract and the adjoining property owners. This is consistent with the Federal counterpart in SMCRA that requires applicants to submit as part of any bond release application copies of letters which the applicant has sent to adjoining landowners and others in the locality in which the mining took place notifying such entities of the applicant's intention to seek bond release.

Because this North Dakota statute change contains language that is the same as or similar to SMCRA, we find that it is no less stringent than SMCRA.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. ND–JJ–03). North Dakota State University replied on May 18, 2005, that it agreed with the amendment (Amendment Record No. ND–JJ–04).

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the North Dakota program (Administrative Record No. ND–JJ–03). Two Federal agencies (U.S. Natural Resources Conservation Service and U.S. Geological Survey) sent us letters (May 23, 2005 and June 7, 2005, respectively) stating that they had no comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that North Dakota proposed to make in this amendment pertains to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On April 25, 2005, we requested comments on North Dakota's amendment (Administrative Record No. ND–JJ–03), but neither SHPO or ACHP responded to our request.

V. OSM's Decision

Based on the above findings, we approve North Dakota's April 20, 2005, amendment.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 934, which codify decisions concerning the North Dakota program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

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

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

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

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

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 29, 2005.

Allen D. Klein,

Regional Director, Western Regional.

■ For the reasons set out in the preamble, 30 CFR part 934 is amended as set forth below:

PART 934—North Dakota

■ 1. The authority citation for part 934 continues to read as follows:

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

■ 2. Section 934.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* * *	* *
April 20, 2005	November 28, 2005	NDCC 38–14.1–17.1.a and 2005b.

[FR Doc. 05–23324 Filed 11–25–05; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 050426117–5117–01; I.D. 110905E]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #10 - Adjustment of the Recreational Fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon

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

ACTION: Temporary rule; modification of fishing seasons; request for comments.

SUMMARY: NMFS announces a regulatory modification in the recreational fishery from Leadbetter Point, WA, to Cape Falcon, OR (Columbia River Subarea). Effective Friday, September 17, 2005, the daily bag limit for the Columbia River Subarea was modified as follows: ''All Salmon, two fish per day, all retained coho must have a healed adipose fin clip.'' All other restrictions remain in effect as announced for 2005 ocean salmon fisheries, and by previous inseason actions. This action was necessary to conform to the 2005 management goals, and the intended effect is to allow the fishery to operate within the seasons and quotas specified in the 2005 annual management measures.

DATES: Modification in the recreational fishery from Leadbetter Point, WA to Cape Falcon, OR is effective 001 hours local time (l.t.) Friday, September 17, 2005, until the next scheduled open period, which will be announced in a future publication in the **Federal Register**.

Comments will be accepted through December 13, 2005.

ADDRESSES: Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the *2005salmonIA10.nwr@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include [050426117–5117–01 and/or I.D. 110905E] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of

the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The NMFS Regional Administrator (RA) has adjusted the recreational fishery from Leadbetter Point, WA, to Cape Falcon, OR (Columbia River Subarea), with one regulatory modification. On September 13, 2005, the Regional Administrator determined that the Chinook catch rate was slower than anticipated and that there was sufficient Chinook quota remaining to allow relaxation of the daily bag limit. Therefore, effective Friday, September 17, 2005, the daily bag limit for the Columbia River Subarea was modified as follows: ''All Salmon, two fish per day, all retained coho must have a healed adipose fin clip.''

All other restrictions remain in effect as announced for 2005 ocean salmon fisheries, and by previous inseason actions. This action was necessary to conform to the 2005 management goals, and the intended effect is to allow the fishery to operate within the seasons and quotas specified in the 2005 annual management measures. Modification of the species that may be caught and landed during specific seasons and the establishment or modification of limited retention regulations is authorized by regulations at 50 CFR 660.409(b)(1)(ii). Modification in recreational bag limits and recreational fishing days per calendar week is authorized by regulations at 50 CFR 660.409(b)(1)(iii).

In the 2005 annual management measures for ocean salmon fisheries (70 FR 23054, May 4, 2005), NMFS announced the recreational fisheries: the area from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea) opened July 1 through the earlier of September 18 or a 12,667 marked coho subarea quota with a subarea guideline of 4,300 Chinook; the area from Cape Alava to Queets River, WA (La Push Subarea) opened July 1 through the earlier of September 18 or a 3,067 marked coho subarea quota with a subarea guideline of 1,900 Chinook; the area from Queets River to Leadbetter Point, WA (Westport Subarea) opened June 26 through the earlier of September 18 or a 45,066 marked coho subarea quota with a subarea guideline of 28,750 Chinook; the area from Leadbetter Point, WA to Cape Falcon, OR (Columbia River Subarea) opened July 3 through the earlier of September 30 or a 60,900–marked coho subarea quota with a subarea guideline of 8,200 Chinook. The Neah Bay and La Push Subareas were opened Tuesday through Saturday, and the Westport and Columbia River Subareas were opened Sunday through Thursday. All subareas had a provision specifying that there may be a conference call no later than July 27 to consider opening seven days per week. All subareas were restricted to a Chinook minimum size limit of 24 inches (61.0 cm) total length. In addition, all of the subarea bag limits were for all salmon, two fish per day, no more than one of which may be a Chinook, with all retained coho required to have a healed adipose fin clip.

The recreational fisheries in the area from Cape Alava, WA, to Cape Falcon, OR (La Push, Westport, and Columbia River Subareas), were modified by Inseason Action ı5 (70 FR 47727, August 15, 2005), effective Friday, July 29, 2005, to be open seven days per week, with a modified daily bag limit as follows: ''All salmon, two fish per day, and all retained coho must have a healed adipose fin clip.'' All other restrictions remained in effect as announced for 2005 Ocean Salmon Fisheries.

The recreational fishery from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea), was modified by Inseason Action #6 (70 FR 52035, September 1, 2005), effective Tuesday, August 16, 2005, to a have a daily bag limit as follows: ''All salmon, two fish per day, and all retained coho must have a healed adipose fin clip.'' All other restrictions remained in effect as announced for 2005 Ocean Salmon Fisheries.

The recreational fishery from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea), was modified by Inseason Action #8 (70 FR 55303, September 21, 2005), effective Tuesday, August 30, 2005, to be open seven days per week. All other restrictions remained in effect as announced for 2005 ocean salmon fisheries, and by previous inseason actions.

The Recreational Fishery from Leadbetter Point, WA to Cape Falcon, OR (Columbia River Subarea), was modified by Inseason Action #9 (70 FR , 69916, November 18, 2005), effective Friday, September 9, 2005, to have a daily bag limit as follows: ''All salmon, except no Chinook retention, two fish per day, all retained coho must have a healed adipose fin clip.'' All other restrictions remained in effect as announced for 2005 ocean salmon fisheries, and by previous inseason actions.

On September 13, 2005, the RA consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the Chinook and coho catch rates, and effort data indicated that the Chinook catch rate was slower than anticipated and that there was sufficient Chinook quota remaining to relax the daily bag limit. As a result, on September 13, 2005, the states recommended, and the RA concurred, that effective Friday, September 17, 2005, the Columbia River Subarea would be modified to have a daily bag limit as follows: ''All Salmon, two fish per day, all retained coho must have a healed adipose fin clip.'' All other restrictions remain in effect as announced for 2005 ocean salmon fisheries, and by previous inseason actions.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason action procedures of 50 CFR 660.411, actual notice to fishers of the already described regulatory action was given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (70 FR 23054, May 4, 2005), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery

modifications had to be implemented in order to allow fishers access to the available fish at the time the fish were available. The AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of this action would unnecessarily limit fishers appropriately controlled access to available fish during the scheduled fishing season by unnecessarily maintaining a restriction. The action allowed fishers to land up to two of any species of salmon, previously Chinook salmon could not be retained.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: November 18, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–23284 Filed 11–25–05; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 227
Monday, November 28, 2005

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13524; Airspace Docket No. 02–AWP–07]

Proposed Revision of VOR Federal Airway V–257

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: This action withdraws the notice of proposed rulemaking (NPRM) published in the **Federal Register** on November 7, 2002 (67 FR 67801). In that action, the FAA proposed to revise Federal Airway V–257 between the Phoenix, AZ, Very High Frequency Omni-directional Radio Range and Tactical Air Navigation Aids (VORTAC) and the Drake, AZ, VORTAC. The FAA has determined that withdrawal of the proposed rule is warranted since the proposed action would require the revision of numerous instrument procedures in the Phoenix area.

EFFECTIVE DATE: 0901 UTC, November 28, 2005.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On November 7, 2002, an NPRM was published in the **Federal Register** proposing to amend 14 Code of Federal Regulations (14 CFR) part 71 to revise Federal Airway V–257 between the Phoenix, AZ, Very High Frequency Omni-directional Radio Range and Tactical Air Navigation Aids (VORTAC) and the Drake, AZ, VORTAC (67 FR 67801). A review of airspace in the Phoenix area revealed that numerous procedures would need to be revised if the revision to Federal Airway V–257 proceeds, therefore the FAA has determined to withdraw the proposed action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

In consideration of the foregoing, the NPRM for FAA Docket No. FAA–2002–13524, Airspace Docket No. 02–AWP–07, as published in the **Federal Register** on November 7, 2002 (67 FR 67801), is hereby withdrawn.

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

Issued in Washington, DC, on November 17, 2005.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 05–23307 Filed 11–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

31 CFR Part 1

Privacy Act of 1974, Proposed Implementation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, the Department of the Treasury gives notice of a proposed amendment to this part to exempt Internal Revenue Service (IRS) system of records, Treasury/IRS 34.022—National Background Investigation Center Management Information System.

DATES: Comments must be received no later than December 28, 2005.

ADDRESSES: Comments should be submitted to Governmental Liaison and Disclosure, 1111 Constitution Avenue NW., Washington, DC 20224, attention: David Silverman, room 7562. Comments may also be submitted through the Federal rulemaking portal at *http://www.regulations.gov* (follow the instructions for submitting comments). Comments will be made available for inspection at the IRS Freedom of Information Reading Room, also located at 1111 Constitution Avenue, NW. The telephone number for the Reading Room is (202) 622–5164 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Mary Anderson, Program Analyst, (703) 647–5477 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Currently, Treasury/IRS 34.022 is exempt under (j)(2) of the Privacy Act. After careful review, the Internal Revenue Service proposes an amendment to change the basis for the exemption claimed for the system of records from that which is provided under 5 U.S.C. 552a(j)(2) to that which is provided under 5 U.S.C. 552a(k)(5).

The (k)(5) exemption is more appropriate because the investigatory material contained in this system of records is collected and maintained solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information.

Under 5 U.S.C. 552a(k)(5), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system is investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Thus to the extent that the records in this system can be disclosed without revealing the identity of a confidential source, they are not within the scope of this exemption and are subject to all the requirements of the Privacy Act.

The system of records will be exempt from the following provisions of the Privacy Act pursuant to 5 U.S.C. 552a (k)(5): 5 U.S.C. 552a (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

The sections of 5 U.S.C. 552a from which the system of records is exempt include in general those providing for

individuals' access to or amendment of records. When such access or amendment would cause the identity of a confidential source to be revealed, it would impair the future ability of the Department to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. In addition, the system should be exempt from 5 U.S.C. 552a(e)(1) which requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The Department believes that to fulfill the requirements of 5 U.S.C. 552a(e)(1) would unduly restrict the agency in its information gathering inasmuch as it is often not until well after the investigation that it is possible to determine the relevance and necessity of particular information.

In a notice, to be published separately in the **Federal Register**, the Department proposes to revise Treasury/IRS 34.022. The purpose of the notice is to make certain alterations to the notice including changing the title from ''Treasury/IRS 34.022—National Background Investigations Center Management Information System'' to ''Treasury/IRS 34.022—Automated Background Investigations System (ABIS).''

As required by Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

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

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that these regulations will not significantly affect a substantial number of small entities. The proposed rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that this proposed rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1 subpart C of Title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301, 31 U.S.C. 321, subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 of subpart C is amended as follows:

a. Paragraph (c)(1)(viii) is amended by removing ''IRS 34.022—National Background Investigations Center Management Information System'' from the table.

b. Paragraph (m)(1)(viii) is amended by adding the following text to the table in numerical order:

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.

* * * * *

(m) * * *

(1) * * *

(viii) * * *

Number	Name of system
* * * * *	
IRS 34.022	Automated Background Investigations System (ABIS)
* * * * *	

* * * * *

Dated: October 3, 2005.

Sandra L. Pack,

Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. E5–6577 Filed 11–25–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 661

[Docket No. FTA–2005–23082]

RIN 2132–AA80

Buy America Requirements; Amendments to Definitions and Waiver Procedures

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) requires the Federal Transit Administration (FTA) to make certain changes to our Buy America requirements. Accordingly, this Notice of Proposed Rulemaking (NPRM) would clarify the Buy America requirements with respect to microprocessor waivers, remove two general waiver categories, allow for post-award waivers, require greater detail for public interest waivers, and specify that final decisions by FTA are subject to judicial review. In addition, this NPRM would clarify the definitions of end product, negotiated agreement, and contractor, and provide a list representative of those items. The NPRM also proposes addressing the procurement of systems under the definition of end product, negotiated agreement, and contractor to ensure that major system procurements are not used to circumvent the Buy America requirements. Finally, the NPRM would make a minor clarification to pre-award and post-delivery review of rolling stock purchases.

DATES: Comments requested by January 27, 2006. Late filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FTA–2005–23082] by any of the following methods:

Federal Rulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL–401, Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name (Federal Transit Administration and Docket number (FTA–2005–23082) or the Regulatory Identification Number (RIN) for this rulemaking at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted, without change, to *http://dms.dot.gov* including any personal information provided and will be available to

internet users. Please see the Privacy Act section of this document.

Docket: For access to the docket to read background documents and comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joseph Pixley, Chief Counsel's Office, Federal Transit Administration, 400 Seventh Street SW., Room 9316, Washington, DC 20590, (202) 366–4011 or *Joseph.Pixley@fta.dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In section 401 of the Surface Transportation Assistance Act of 1978 (STAA) (Pub. L. 95–594, 92 Stat. 2689), Congress first enacted the Buy America legislation applicable to the expenditure of Federal funds by recipients under FTA grant programs. This legislation established a domestic preference for ''articles, materials, supplies mined, produced, or manufactured'' in the United States and costing more than $500,000. In January 1983, Congress repealed section 401 and substituted section 165 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424, 96 Stat. 2097), which eliminated the $500,000 threshold and created four waiver exceptions. Section 165 is codified at 49 U.S.C. 5323(j). Congress further amended 49 U.S.C. § 5323 (j) in a series of enactments between 1984 and 2003. *See generally* section 227 of the Surface Transportation Assistance and Uniform Relocation Act of 1987 (STURAA) (Pub. L. 100–17, 101 Stat. 165); section 1048 of the Intermodal Surface Transportation Efficiency Act (ISTEA) (Pub. L. 102–240); Section 3020(b) of the Transportation Equity Act for the Twenty-First Century (TEA–21) (Pub. L. 105–178).

Pursuant to 49 U.S.C. 5323 (j), FTA promulgated regulations to implement and administer the Buy America requirements at 49 CFR 661.

SAFETEA–LU amends Section 5323(j) by redesignating paragraphs (3) through (7) as paragraphs (4) through (8) and by inserting after paragraph (2) and (8), respectively. Section 5323(j)(6) (as so redesignated) is also amended by striking ''Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 1914)'' and inserting ''Federal Public Transportation Act of 2005''.

Furthermore, SAFETEA–LU repeals the general waiver found in Appendix A of 49 C.F.R 661.7 subsections (b) and (c) for 15 passenger vans and wagons produced by Chrysler Corporation.

In addition, SAFETEA–LU requires that the Secretary issue a rule that clarifies the microprocessor waiver, defines end product, negotiated procurement, and contractor, allows for a post-award waiver, and includes a certification under a negotiated procurement process. Each of these legislative changes and requirements will be discussed in further detail, below.

II. Written Justification for Public Interest Waiver

FTA's Buy America regulations provide for public interest waivers if the Administrator finds that the application of the Buy America requirements would be inconsistent with the public interest.

The new provision in section 5323(j)(3) requires that the Secretary issue a detailed written justification, explaining why the waiver is in the public interest, and requiring that such justifications be published in the **Federal Register** for notice and comment by the public for a reasonable period of time. FTA considers this requirement to be self-explanatory. To implement the change in 5323(j)(3), therefore, FTA proposes to add the following language: ''When granting a public interest waiver, the Administrator shall issue a detailed written statement justifying why the waiver is in the public interest. The Administrator shall publish this justification in the **Federal Register**, providing the public with a reasonable period of time for notice and comment.''

Note that this proposed language in the regulation requires written justification and publication in the **Federal Register** only in cases where the Administrator approves a waiver request, rather than denies such a request. FTA makes this distinction for two reasons. First, the statutory language indicates that only waiver approvals are required to be published in the **Federal Register**. *See* Section 5323(j)(3) (''shall issue a detailed written justification as to why the waiver is in the public interest''). Second, for some time FTA has placed all requests for public interest waivers on the Buy America section of its web site, *http://www.fta.dot.gov/legal/buy_america/14328_ENG_HTML.htm*, and has requested comment from the public. In addition, FTA notifies the American Public Transportation Association (APTA) when a waiver request is posted and APTA sends out a notice to all of its members, which include transit authorities and transit industry members. This process functions well. The relevant industries and grantees actively respond and provide valuable information to FTA. Following receipt of such comments, the FTA Office of Chief Counsel, through authority delegated by the Administrator, then issues ''detailed written statements'' either approving or disapproving public interest waiver requests. FTA proposes maintaining this in-house ''notice and comment'' process in cases where public interest waiver requests are denied. FTA requests public comment on whether we should continue with this process or whether there are other, more effective means, for accomplishing this task.

III. Administrative Review

FTA's Buy America regulations provide for ''Rights of Third Parties'' to petition FTA for review of a decision and to pursue any other additional right at law or equity.

The new Section 5323(j)(9) states that ''a party adversely affected by an agency action under this subsection shall have the right to seek review under section 702 of title 5 [the Administrative Procedure Act (APA)].'' FTA considers this provision to be self-explanatory. Moreover, FTA has always believed that its final agency actions are subject to judicial review under the APA. To clarify this, however, FTA proposes striking the word ''Third'' from the title heading ''Rights of Third Parties'' in section 661.20, to reflect that all parties have the right to judicial review under the APA. A new subsection (a) will be added as follows: ''(a) A party adversely affected by an FTA action under this subsection shall have the right to seek review under the Administrative Procedure Act (APA), 5 U.S.C. 702 *et seq*.''

In addition, the existing provision in section 661.20, pertaining to the rights of third parties, will be designated as paragraph (b), with the following highlighted clause added at the beginning, to read: ''(b) *Except as provided in section 661.20(a)*, the sole right of any third party under the Buy America provision is to petition FTA under the provisions of Sec. 661.15 of this part. No third party has any additional right, at law or equity, for any remedy including, but not limited to, injunctions, damages, or cancellation of the Federal grant or contracts of the grantee.''

FTA seeks comment on whether this proposed change is sufficient to clarify a party's appeal rights under the Buy America regulations.

IV. Repeal of General Waiver for Chrysler Vans

Appendix A to section 661.7 provides for general waivers for 15 passenger Chrysler vans and wagons. SAFETEA–LU repeals these two general waivers for Chrysler vehicles in Appendix A. Accordingly, subsections (b) and (c) of Appendix A, 49 CFR 661.7, will be stricken and subsection (d), the general waiver pertaining to microcomputers, will be re-designated as subsection (b).

V. Microprocessor Waiver

FTA's existing regulations provide for a general waiver of microcomputer equipment. SAFETEA–LU requires that the Secretary issue a rule to ''clarify'' the microcomputer/microprocessor waiver as follows:

> (A) *Microprocessor waiver.*—To clarify that any waiver from the Buy America requirements issued under section 5323(j)(2) of such title [49 U.S.C.A. 5323(j)(2)] for a microprocessor, computer, or microcomputer applies only to a device used solely for the purpose of processing or storing data and does not extend to a product containing a microprocessor, computer, or microcomputer.

This ''clarification'' in SAFETEA–LU actually reflects current FTA practice with respect to implementing the general waiver for microcomputer, microprocessor, and related equipment. For example, FTA has previously defined a ''microcomputer'' as

> A computer system whose processing unit is a microprocessor. A basic microcomputer includes a microprocessor, storage, and input/output facility, which may or may not be on one chip. The same source defines computer system as: A functional unit consisting of one or more computers and associated software, that uses common storage for all or part of a program and also for all or part of the data necessary for the execution of the program executes user-written or user-designated programs; performs user-designated data manipulation, including arithmetic operations and logic operations; and that can execute programs that modify themselves during their executions. A computer system may be a stand-alone unit or may consist of several interconnected units. Synonymous with ADP system, computing system.

50 FR 18760 (May 2, 1985).

Applying this definition, FTA determined that a manufacturer may use foreign microcomputer equipment without violating the Buy America requirements. For example, FTA determined that a Mobile Data Communication System was covered by the microcomputer waiver, and found that ''[a]ll this equipment and associated software is linked together to a computer system at your headquarters with additional interfaces to other CDTA computer systems.'' Capital District Transportation Authority letter, August 30, 2001. Following that decision, FTA withdrew an outstanding advance notice of proposed rulemaking on the microcomputer waiver, and stated as follows:

> It should be noted that FTA does not apply the waiver to an entire product because it contains a microcomputer. The parameters of the waiver as it currently exists are that if the end product is itself a microcomputer or software as defined above, Buy America is waived. If, however, the end product contains a microcomputer (*e.g.*, a fare card system), that microcomputer is exempt from the requirements of Buy America, but the rest of the end product must be in compliance.

68 FR 9810 (Feb. 28, 2003).

FTA applied this reasoning to subsequent Buy America decisions, finding for example, that some components of a fare collection system were subject to the waiver, but others were not. Specifically, FTA found that ''[t]he bill and coin validator, and the printer, are not, themselves, microcomputers, although they may each contain embedded microprocessors.'' CoinCard letter, May 23, 2003. See also, MTA letter, September 23, 2003, and Vansco Electronics letter, September 15, 2003. All of these letters are available on FTA's Web site at *http://fta.dot.gov*. In FTA's most recent Buy America decision addressing the microcomputer waiver in a procurement for Monitoring and Diagnostic equipment, FTA stated:

> Some of the Monitoring and Diagnostic system is microcomputer equipment subject to the waiver; however, some of it is not. As discussed in the definition, a microcomputer is a computer based on a microprocessor. A microprocessor is a computer whose central processing unit is contained on one or a small number of integrated circuits. Microcomputers may be stand-alone units or they may be embedded in other equipment. They must have, or be, controllers or communication processors and be capable of processing, storage, programming, and have input/output facilities. Microcomputers may be grouped within larger systems or equipment, consisting of several interconnected units each functioning as either stand-alone units or embedded equipment, or a mix of both. Related hardware and equipment that may be controlled by a microprocessor is not covered by the microcomputer waiver.

Questor Tangent Letter, August 2, 2004.

To reflect FTA's current understanding of this general waiver and to implement the specific requirements of SAFETEA–LU, is clarified to read as follows: ''(b) Under the provisions of Sec. 661.7 (b) and (c) of this part, a general public interest waiver from the Buy America requirements applies to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device which merely contains a microprocessor or microcomputer, or is controlled by a microprocessor, and is not used solely for the purpose of processing or storing data.'' FTA seeks comment on whether this change adequately clarifies the microprocessor waiver.

VI. Proposed Revisions to Buy America Definitions

A. Negotiated Procurement

SAFETEA–LU requires that the Secretary issue a rule to define the term ''negotiated procurement.'' In public contracting two basic methods of procurement are used: sealed bidding and negotiated procurement. Generally, sealed bidding is a formal process marked by five phases: (1) Preparation of the Invitation for Bids (IFB) by the contracting agency; (2) Publicizing the IFB; (3) Submission of bids by interested contractors; (4) Evaluation of bids by the contracting agency; and (5) Contract award. In sealed bidding, contract specifications are clear, complete and definite. There are no ''discussions'' or ''negotiations'' between the parties, other than what is contained in the IFB and submitted bids. There are strict requirements that bids comply in all material respects with the invitation for bids, to include the method and time of bid submission. A contracting agency may only accept a responsive bid from a responsible bidder. A bid is considered ''responsive'' if it unequivocally offers to provide the requested supplies or services at a firm, fixed price, in accordance with the terms of the IFB. Finally, contracting agencies evaluate bids on price and non-price-related factors, but with award generally made on the basis of lowest price offered.

By contrast, negotiated procurements are marked by greater flexibility and variety than sealed bid solicitations. Generally, in negotiated contracting the contracting agency issues a Request for Proposal (RFP). RFPs include a description of the work to be performed, a section describing the information that offerors need to provide in their proposals, and a section describing how the agency will evaluate proposals. Interested contractors, called offerors, submit offers or proposals in response to the RFP. Unlike in sealed bidding, negotiated procurements may include ''discussions'' or ''negotiations''

between agency and offerors, if the agency so chooses. Also, unlike in sealed bidding, which is marked by a one-time, all or nothing submission of bids, negotiated procurements may include multiple offers by each contractor, with the ''best and final'' offer or ''final revised'' offer controlling, unless award is to be made on receipt of initial proposals. In addition, negotiated procurements may be either competitive or non-competitive, as in the case of sole-source procurements. In negotiated procurements, contracting officers generally have discretion to weigh non-price factors to a greater extent than in sealed bidding. In so-called ''best value'' contracting, price may even be the low ranking factor.

Because negotiated procurements are marked by so much variety and provide contracting officials with great discretion to implement different procurement mechanisms (*e.g.* award with discussions versus award without discussions), the term ''negotiated procurement'' is difficult to define. *See e.g.*, Gallagher, the Law of Federal Negotiated Contract Formation at p. 39 (CGA Publications, Inc., 1981) (''Providing a nutshell description of ''negotiation'' is much more difficult [than sealed bidding]).'' For this reason, contract law scholars have defined negotiated procurement by what it is not. For example, Professors Nash and Cibinic describe a negotiated contract as one that is awarded without the use of a sealed bid. *See* Formation of Government Contracts, Second Edition, George Washington University, 1986. The drafters of the Federal Acquisition Regulation (FAR), which governs direct Federal procurement, have adopted a similar definition. FAR Part 15—Contracting By Negotiation, defines negotiated procurement as follows: ''A contract awarded using other than sealed bidding procedures is a negotiated contract.'' 48 CFR 15.000.

There is no FTA requirement that grantees use a specific procurement method such as sealed bidding or negotiated procurement, or a particular methodology of negotiations, for any particular procurement. Indeed, the Buy America regulations in 49 CFR Part 661 refer to both ''bids'' and ''bidders'' and ''offers'' and ''offerors,'' reflecting the two basic methods of procurement available to grantees.

Recognizing that procurement practices are established locally, and to define ''negotiated procurement'' in such a way as not to overtly contradict or limit local practices of grantees, FTA proposes adopting the ''flexible'' definition of negotiated contracts in FAR Part 15. The proposed definition to be added would be as follows: ''Negotiated Procurement means a contract awarded using other than sealed bidding procedures.''

FTA seeks comment on whether this definition sufficiently captures the concept of negotiated procurement and whether there are other definitions available that more accurately capture this concept.

B. Contractor

SAFETEA–LU requires that the Secretary issue a rule to define the term ''contractor.'' To implement this requirement, FTA proposes two alternative definitions adopted from direct Federal procurement. The first proposed definition to be added would state as follows: ''Contractor means any individual or other legal entity that directly or indirectly (*e.g.*, through an affiliate), submits bids or offers for or is awarded, or reasonably may be expected to submit bids or offers for or be awarded, a federally funded third party contract or subcontract under a federally funded third party contract; or, conducts business, or reasonably may be expected to conduct business, with an FTA grantee, as an agent or representative of another contractor.'' This proposed definition comes from the definition of ''contractor'' in FAR 9.403 (suspension & debarment section). The term contractor could also be defined as follows: ''Contractor means any party to a third party government contract other than the government.'' This definition is based on the definition of ''contractor'' in the Contract Disputes Act (CDA), 41 U.S.C. 601(4).

FTA seeks comment on the relative merits and demerits of selecting one of the above definitions over the other. FTA would also like to receive information on whether there are other definitions available for this situation that would better serve our purpose. If a commenter proposes an alternative definition, please include as much supporting information as possible for the alternative definition.

C. End Product

SAFETEA–LU requires that the Secretary issue a rule to define the term ''end product,'' and to develop a list of representative items that are subject to the Buy America requirements. To implement this requirement, FTA proposes two alternative definitions of ''end product.'' The first is based on the definition of end product currently used by FTA. To examine this current definition, FTA will first review its history in Buy America practice.

FTA's first regulatory implementation of the Surface Transportation Assistance Act of 1978 (STAA) (Pub. L. 95–594, 92 Stat. 2689) made clear that ''[t]he legislative history of the Buy America provision indicates that Congress intended it to be interpreted in the light of the Buy American Act of 1933, 41 U.S.C. 10a–10d, to the extent the Act is applicable.'' The Buy American Act (BAA), in fact, is an entirely different statute from Buy America, applicable to direct purchases by federal agencies and departments. As implemented in FAR Part 25, the BAA establishes a preference for ''domestic end products,'' which are defined as follows:

> An unmanufactured end product which has been mined or produced in the United States, or an end product manufactured in the United States if the cost of its components mined, produced and/or manufactured in the United States exceeds 50 percent of the cost of all its components.

The STAA of 1978 and its implementing regulation retained this ''preference'' for ''domestic end products'' from the BAA, but tailored the requirements to FTA's grant making process. FTA's first Buy America regulation issued in December 1978 defined ''end product'' as follows: ''(e) 'End product' means an article, material or supply, whether manufactured or unmanufactured, that is to be acquired by the grantee, with financial assistance derived from UMTA, and that is to be delivered to the grantee, as specified by the third party contract. (f) 'Foreign end product' means an end product other than a domestic end product.'' Like the FAR Part 25 provisions implementing the BAA, the original Buy America regulation also included a ''50 percent'' requirement for domestic components. (See section 660.22 Determination of Origins stating: ''(a) In order for a manufactured end product to be considered a domestic end product—(1) the cost of the domestic components must exceed 50 percent of the cost of all its components; and (2) the final assembly of the components to form the end product must take place in the United States.'')

Subsequently, Congress eliminated the ''preference'' for domestic products in Buy America and the ''50 percent'' domestic component requirement, making compliance with Buy America an absolute ''requirement'' (unless a waiver applies) and increasing the domestic content threshold to 100 percent in the case of steel and iron products and manufactured products, and 60 percent in the case of rolling stock. Over the years, FTA modified its Buy America regulations to reflect these

changes. Nevertheless, from December 1978 to this day, FTA has retained some variation of ''end product'' as originally defined in the first Buy America regulation: '' 'End product' means an article, material or supply * * * that is to be delivered to the grantee, as specified by the third party contract.'' Section 660.13. This definition comes from case law interpreting the Buy American Act. For example, in *Brown Boveri Corp.*, the then U.S. General Accounting Office [now the U.S. Government Accountability Office] (GAO) defined ''end product'' as follows: ''As to a given contract the end product is the item to be delivered to the Government as specified in the contract.'' B–187252, 56 Comp. Gen. 596, May 10, 1977 (emphasis in original).

Consistent with this precedent, FTA currently defines ''end product,'' in part, as ''any item subject to 49 U.S.C. 5323(j) that is to be acquired by a grantee, as specified in the overall project contract.'' (Emphasis added). 49 CFR 661.11(s). In the current version of the Buy America regulations, this definition of ''end product'' migrated from the definition section at 661.3 to the rolling stock section at 661.11, creating some confusion that the term ''end product'' is only relevant to rolling stock procurements. Nevertheless, the term ''end product'' remains in the definition of ''component'' in section 661.3, indicating the general applicability of the term in Buy America analysis. See 49 CFR 661.3: ''Component means any article, material, or supply * * * that is directly incorporated into the end product at the final assembly location.''

Moreover, although section 661.11 applies specifically to rolling stock procurements, FTA has consistently applied the definition at section 661.11(s) and similar definitions of ''end product'' to steel and iron and manufactured products as well. In a letter to the Santa Clara Valley Transportation Authority dated October 18, 2001, for example, FTA addressed whether a ''cable trough'' was an end product in a procurement for a section of the Tasman Corridor East light rail construction project. The letter stated, in part, as follows:

> FTA has consistently applied the following reasoning to the end product question: ''[A]n end product is 'any item' * * * that is to be acquired by a grantee, as specified in the overall project contract. The key determinant is the grantee's specification. For example, if a grantee is procuring a new rail car, the car is the end product and the propulsion motor would be a component of the end product. If that same grantee is procuring a replacement propulsion motor for an existing rail car, that propulsion motor would be the end product.'' 56 FR 928 (Jan. 9, 1991). (Emphasis added.)
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> Similarly, in 1981 FTA determined that ''the procurement of construction is treated as procurement of a manufactured product in that the deliverable of the construction contract is considered as the end product and the construction materials used therein are considered components of the end product.'' 46 FR 5808 (Jan. 19, 1981). Further, when asked to clarify the definition of ''end product,'' FTA concluded that, ''the deliverable item specified in the contract is the end product. For example, in a contract for 10 buses that must contain 500 h.p. engines, the 10 buses are the end-products.'' Id. (Emphasis added.)

Under FTA's long standing ''end product'' analysis, where the end product of a procurement is the deliverable item specified by the grantee in the third party contract, not only the ''end product,'' but also the components, subcomponents, and even the applicable Buy America standard are subject to ''shift,'' for lack of a better term, depending on the article being procured. In the earlier example, cited above, if a grantee is procuring a new rail car, the car is the end product and the propulsion motor would be a component of the end product. For this hypothetical rail car end product, the rolling stock standard (*e.g.* 60 percent domestic components by cost) at 661.11 would apply. However, if that same grantee is procuring a replacement propulsion motor for an existing rail car, that propulsion motor would be the end product (with different resulting components), and the manufactured products standard (100 percent U.S. content) would apply.

Again, this so-called ''shifting'' end product analysis is long-standing at FTA, beginning with the original implementation of Buy America in 1978. Moreover, this methodology is based on decisions interpreting the Buy American Act. In the case of *Brown* v. *Boveri*, cited previously, GAO recognized a similar ''shifting'' analysis of end product under the BAA:

> We have held that there is no inconsistency between a given article's classification as an end product under a particular procurement and its subsequent classification as a component under another contract under which that article will be incorporated into a different end product.

56 Comp. Gen. 596 (1977). In a decision letter from April 2000, FTA explained the advantages of this ''shifting'' end product methodology as avoiding having to classify literally thousands of parts, due to the enormous administrative burden:

> Depending on the particular procurement at issue, literally thousands of individual manufactured items, themselves made up of many thousand more manufactured sub-items, may go into the ultimate product being procured by an FTA grant recipient. Indeed, the question is one of perspective: any given item, from a screw to a maintenance garage, may be viewed as an end product, a component, a subcomponent, or less. Accordingly, FTA's rule looks at the end product being acquired in a given case. Here, the procurement contract was for the garage; accordingly, the vehicle lift to be installed in the garage was a component. Further, the end product must be the result of a manufacturing process. In this case, the hoist will ultimately be a fixture of the garage, and installation of the hoist is part of the manufacturing process. The construction of the garage as a whole, is the subject of the procurement and the end product.

June 8, 2000 decision letter to Macton-Joyce and Whiting Corporation.

Based on this long standing ''end product'' methodology and precedent, FTA proposes moving its existing definition of end product at 661.11(s) to the definition section of Part 661.3, for universal applicability. In keeping with the Congress's mandate to include a ''representative list'' of end product items, FTA proposes the following general definition: ''End product means any item subject to 49 U.S.C. 5323(j) that is to be acquired by a grantee, as specified in the overall project contact. A list of representative end product items is included at Appendix A.'' FTA seeks public comment on this proposal.

FTA proposes an alternative definition of ''end product'' as follows:

> End product means any article, material, supply, or system, whether manufactured or unmanufactured, that is acquired for public use under a federally funded third party contract. A list of representative end products is included at Appendix A.

FTA bases this alternative definition on the definition of end product under the Buy American Act in FAR Part 25. What FTA proposes under this second, alternative version is to abandon its long standing ''shifting'' end product methodology described earlier, in favor of one where the end products do not ''shift.'' In other words, where a bus, rail car, or other major procurement items are always designated as end products—and their components are always designated as components, even if purchased as replacement parts. In the earlier example, cited above, if a grantee is procuring a new rail car, the car is the end product and the propulsion motor would be a component of the end product. Again, for this hypothetical rail car end product, the rolling stock standard (*e.g.* 60 percent domestic components by cost) at 661.11 would

apply. However, under the new end product definition and methodology, if that same grantee is procuring a replacement propulsion motor for an existing rail car, which propulsion motor would still be a component of the rail car end product, and the rolling stock standard applicable to the rail car would apply to its component. Such a new methodology would necessarily place greater reliance on the accompanying list of end product items. In addition, procurements under this new Buy America methodology may result in multiple end products or components. In such instances, each distinct end product or component procured with federal funds must separately and independently comply with applicable Buy America standards.

FTA seeks comment on which approach should be adopted and why one approach is favored over the other.

D. End Product as System

In defining terms like ''end product,'' SAFETEA–LU requires that the Secretary issue a final rule addressing ''the procurement of systems * * * to ensure that major system procurements are not used to circumvent the Buy America requirements.'' FTA has long considered ''systems'' as definable end products. For example, in decisions dating from 1994, 1995, and 2002, FTA has taken the position that automated fare collection systems (AFC) systems constitute end products. Indeed, section 661.11(s) states, in part, that ''[i]f a system is being procured as the end product by the grantee, the installation of the system qualifies as final assembly.'' (Emphasis added). In 1991, FTA also issued a **Federal Register** notice describing the procurement of an entire system under a design-build, or turn-key procurement:

> One commenter questioned how UMTA applies the Buy America requirements when a grantee procures an entire system (a turn-key project). In purchasing systems, it is industry practice to have a contract broken down by sub-systems. As just mentioned, UMTA has defined end product as ''any item or items * * * to be acquired by a grantee, as specified in the overall project contract.'' (Emphasis supplied.) (*See* § 661.11(u).) Accordingly, each sub-system identified in the contract is an end product and subject to the Buy America requirement.
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> For example, UMTA has determined in the past that an entire people mover system has six sub-systems to be supplied by the contractor (under the terms of a particular contract) and that each sub-system is an individual end product. The six sub-systems are: the guideway surfaces and equipment; the vehicles; the traction power system; the command and control system; the communications system; and the maintenance facility and equipment. This means that six separate products must meet the Buy America requirements.

56 FR 926.

Furthermore, decisions interpreting the Buy American Act have also recognized ''systems'' as end products. In *Brown Boveri Corp.*, the ''end product'' to be delivered was a sodium pump-drive system in a nuclear power plant. 56 Comp. Gen. 596 (1997). Similarly, in *Matter of: Dictaphone Corp.*, B–191,383, May 8, 1978, 78–1 CPD 343, GAO held that where an agency purchased a ''Central Dictation System'' the various elements of the system, such as transcribers and recorders, were not independent end products, but rather components of a system. Furthermore, in the case of *Bell Helicopter Textron, Inc.* v. *Adams*, the U.S. District Court for the District of Columbia held that complete helicopters were not individual end products but components of a system (''Short Range Recovery (SRR) Helicopter System . . . define[d] the contract end product of this procurement''). 493 F. Supp. 824, 833 (D.C. D.C. 1980). There is thus a long standing precedent both within the agency and without indicating that procurement of ''systems'' constitute end product items. Beginning in the mid-1990's and today, especially, transit projects are increasingly automated and have integrated ''systems'' of various types within their core functionality. For these reasons, FTA proposes to retain this application of ''systems'' in the end product definition adopted in this rule. Nevertheless, to better implement Congress's mandate in SAFETEA–LU to ''address the procurement of systems under the definition [of end product] to ensure that major system procurements are not used to circumvent the Buy America requirements,'' FTA proposes defining the term ''system.''

In *Bell Helicopter Textron, Inc.* v. *Adams*, cited previously, the U.S. District Court acknowledged that ''presently [in 1980] there are no uniform guidelines interpreting such critical terms as * * * 'system.' '' 493 F. Supp. 824, 831 (D.D.C. 1980). However, within law applicable to the Customs Service, analogous principles support characterizing individual machines or pieces of equipment integrated together to provide a single defined function as a single system. For example, the Customs Service in a case in New York concluded that a ''Flexipark Parking System'' consisting of entry machines, exit machines, automated cashier stations, and ''pay on foot'' automated paying machines represented a single system under a single tariff heading, and not separately classified components. NY H88649, 2002 U.S. Customs NY Lexis 2030 (March 8, 2002). Treas. Dec., 2002 U.S. CUSTOM NY LEXIS 2030; NY H88649 (Mar. 8, 2002).

Moreover, the Harmonized System of tariff classification used by the United States specifically recognizes that fare machines, cash registers and similar calculating devices may be combined with other units to comprise a single system. *See* Harmonized Tariff Schedule of the United States (HTSUS), 19 U.S.C. 1202, heading 8470. The explanatory notes that govern Chapter 84 expressly require that machines which work in combination to perform a specific function are to be classified as a single system under a single tariff heading. These notes provide:

> Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electrical cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 * * *, then the whole falls to be classified in the heading appropriate to that function.

HTSUS, Section XVI, Note 4. Based on this ''functional test'' for interconnected systems from customs law, FTA proposes a definition of ''system,'' as follows:

> System means a machine, product, or device, or a combination of such equipment, consisting of individual components, whether separate or interconnected by piping, transmission devices, electrical cables or circuitry, or by other devices, which are intended to contribute together to a clearly defined function.

Under this proposed new definition the system would be the end product and the individual machines, products, or devices that constitute the system would be components. Certainly some equipment designated as part of a ''system'' in a third party contract may, in fact, prove to be ancillary to the core functionality of the system, and would be a separate end product. Using the proposed ''functional'' definition of system, above, therefore, FTA will carefully review system procurements to determine whether a system exists and if so, which items of equipment constitute the system.

End product systems may be proprietary, where connections and interfaces between devices are marked by proprietary rights or license. Or, depending on the requirements of the grantee, system procurements may require open architecture that permits interface between non-proprietary devices. FTA seeks comment as to

whether the Buy America requirements should apply equally for these two types of system end products, or whether different Buy America standards should apply to proprietary versus open architecture systems. FTA seeks comment on its proposed approach for defining system.

In keeping with the Congress's mandate to include a ''representative list'' of end product items, FTA proposes the following list:

The following is a list of items, as specified by grantees in third party contracts, that are representative end products that are subject to the requirements of Buy America. This list is not all-inclusive.

(1) Rolling stock end products: All individual items identified as rolling stock in Section 661.3 (buses, vans, cars, railcars, locomotives, trolley cars, ferry boats, as well as vehicles used for support services); train control equipment or systems; communication equipment or systems; traction power equipment or systems.

(2) Steel and iron end products: Products and infrastructure projects made primarily of steel or iron or involving track work, including bridges; steel or iron structures; running rail and contact rail; turnouts.

(3) Manufactured end products: Fare collection equipment [non-system equipment] or systems; computers and computer systems; information, security, and data processing equipment or systems; lifts, hoists, and elevators; infrastructure projects not made primarily of steel or iron, including structures (terminals, depots, garages, and bus shelters), ties and ballast; contact rail not made primarily of steel or iron.

This proposed list is not meant to be all-inclusive, but rather describes general categories of end product items. Some of these items are easy to identify as discreet end products, such as buses. Other products are not so easily categorized. For example, the proposed list identifies the following types of equipment as either discreet end products or as system end products: Train control equipment or systems; communication equipment or systems; traction power equipment or systems; information, security, and data processing equipment or systems. This approach is meant to be flexible, to account for a range of procurement requirements. To illustrate this, if a grantee procures hand-held radios, which are one of the items enumerated in 49 CFR 661.11(u)(3), the radios would be discreet end products, under the category of ''communication equipment.'' However, if the grantee procures a hypothetical, wayside ''surveillance system,'' which includes interconnected video cameras, microcomputers, alarms, and remote relay capability, then the ''surveillance system'' would be the end product, and the individual items that make up the system would constitute components. At this stage, it is not practical to pre-define what type of equipment would go into such systems, as transit operators may seek to mix and match different types of system equipment to obtain different functionalities. Therefore, a grantee's specifications in the third party contract will continue to remain important in determining what constitutes discreet end product ''equipment'' or system end products.

FTA considers any proposed list of representative end products to be very important in future Buy America determinations. FTA seeks comment on this proposed list.

E. Final Assembly

FTA proposes amending the definition of ''final assembly'' in Part 661 to incorporate agency guidance. Under FTA's Buy America requirements for rolling stock, 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, 60 percent of all components, by cost, must be of U.S. origin, and final assembly must take place in the U.S. ''Final assembly'' is defined as follows: ''Final Assembly is the creation of the end product from individual elements brought together for that purpose through application of manufacturing processes. If a system is being procured as the end product by the grantee, the installation of the system qualifies as final assembly.'' This definition of ''final assembly'' in the regulation proved to be insufficiently detailed in practice. Grantees and contractors frequently sought FTA guidance on what constituted ''final assembly'' in rolling stock procurements. For this reason, FTA created a Dear Colleague letter of March 18, 1997, which described the minimum requirements for final assembly of rail car vehicles and buses. Section 3035 of the Transportation Equity Act for the 21st Century incorporated these requirements into law. The March 18, 1997 letter states, in part, the following:

In the case of the manufacture of a new rail car, final assembly would typically include, as a minimum, the following operations: Installation and interconnection of propulsion control equipment, propulsion cooling equipment, brake equipment, energy sources for auxiliaries and controls, heating and air conditioning, communications equipment, motors, wheels and axles, suspensions and frames; the inspection and verification of all installation and interconnection work; and the in-plant testing of the stationary product to verify all functions. In the case of a new bus, final assembly would typically include, at a minimum, the installation and interconnection of the engine, transmission, axles, including the cooling and braking systems; the installation and interconnection of the heating and air conditioning equipment; the installation of pneumatic and electrical systems, door systems, passenger seats, passenger grab rails, destination signs, wheelchair lifts; and road testing, final inspection, repairs and preparation of the vehicles for delivery.

The letter also provides that ''[i]f a manufacturer's final assembly processes do not include all the activities that are typically considered the minimum requirements, it can request an FTA determination of compliance.'' *Id.*

Subsequent to the publication of the March 19, 1997 Dear Colleague letter, FTA still frequently received requests for guidance from grantees and contractors on ''final assembly.'' These requestors either were not aware of the Dear Colleague letter, or had questions about fabrication processes which did not fit within the parameters of the 1997 letter. For these reasons, FTA proposes amending the definition of ''final assembly'' in section 661.11, to incorporate the ''minimum requirements'' of final assembly in the March 18, 1997 letter, and to further clarify those requirements. FTA proposes to do this by creating an additional appendix that would state the following:

Rail Cars: In the case of the manufacture of a new, remanufactured, or overhauled rail car, final assembly would typically include, as a *minimum*, the following operations: Installation and interconnection of car bodies or shells, propulsion control equipment, propulsion cooling equipment, brake equipment, energy sources for auxiliaries and controls, heating and air conditioning, communications equipment, pneumatic and electrical systems, door systems, passenger seats, passenger interiors, destination signs, wheelchair lifts, motors, wheels, axles, and gear units, suspensions, frames, and chassis; the inspection and verification of all installation and interconnection work; and the in-plant testing of the stationary product to verify all functions.

Buses: In the case of a new, remanufactured, or overhauled bus, final assembly would typically include, at a *minimum*, the installation and interconnection of car bodies or shells, the engine and transmission (drive train), axles, chassis, and wheels, including the cooling and braking systems; the installation and interconnection of the heating and air conditioning equipment; the installation of pneumatic and electrical systems, door systems, passenger seats, passenger grab rails, destination signs, wheelchair lifts; and road testing, final inspection, repairs and preparation of the vehicles for delivery.

FTA seeks public comment on whether this appendix sufficiently clarifies what FTA considers ''final assembly.''

VII. Post-Award Non-Availability Waiver

Under FTA's current Buy America regulations, grantees are required to ensure that contractors certify in their bids, as a condition of responsiveness, that they will comply with Buy America. 49 CFR 661.13(b). The regulations specifically provide that a bidder or offeror that certifies compliance with Buy America is ''bound by its original certification'' and ''is not eligible for a waiver of those requirements.'' 49 CFR 661.13(c). These regulatory provisions, in effect, eliminated so-called ''post-award'' waivers—waivers issued after contract award.

SAFETEA–LU requires that the Secretary issue a rule to ''permit a grantee to request a non-availability waiver * * * after contract award in any case in which the contractor has made a certification of compliance with the requirements in good faith.'' This requirement will allow FTA the flexibility to consider non-availability waivers in those rare instances where materials or supplies become unavailable, through no fault of the contractor or grantee, after contract award, to the extent that complying with the terms of the third party contract becomes commercially impossible or impracticable (due to price).

Such a post-award waiver could be subject to abuse, however. To guard against this, and to limit approval of post-award waivers to legitimate situations, FTA will require evidence of bidders' and offerors' good faith in originally certifying compliance. Such evidence may include price quotes indicating the availability of domestic material at the time the contractor certified compliance. Bidders or offerors who negligently certify compliance, for example, by not adequately researching the availability of domestic material or by mistakenly concluding that domestic supplies are available, prior to certifying, would be denied a post-award waiver. FTA will also require grantees to produce evidence of changed market conditions, demonstrating the non-availability of materials or supplies after contract award, and the impossibility or impracticability of completing the third party contract. FTA will also consider the status of other bidders or offerors who participated in the procurement and the effect of any waiver on them. For example, a post award waiver will not be granted where other bidders or offerors who certified compliance are able to supply domestic products or material.

To implement the requirement for post-award waivers in SAFETEA–LU, FTA proposes to add the following clause to non-availability waivers: ''In those situations where materials become unavailable after contract award due to unforeseen circumstances beyond the control of the contractor or grantee, the Administrator may grant a non-availability waiver under section 661.7c, in any case in which a contractor has originally certified compliance with the Buy America requirements in good faith, but can no longer comply with its certification and contractual obligations due to commercial impossibility or impracticability. In making such a waiver request, the grantee will submit evidence of the contractor's good faith and evidence justifying the post-award waiver, such as information about the origin of the product or materials, invoices, and other relevant solicitation documents to the FTA Chief Counsel, as requested. In determining whether the conditions exist to grant this post-award non-availability waiver, the Administrator will consider all appropriate factors, including the status of other bidders or offerors in the procurement and the effect of any waiver on them, on a case-by-case basis.'' To reflect this change, and to clarify the distinctions in Buy America certification between sealed bidding and negotiated procurements, FTA proposes to add paragraph (c) that would state: ''A bidder or offeror certifies that it will comply with the applicable requirement and such bidder or offeror is bound by its original certification (in the case of a sealed bidding procurement) or its certification submitted with its final offer (in the case of a negotiated procurement) and is not permitted to change its certification after bid opening or submission of a final offer, except for inadvertent or clerical error, as described in section 661.13(b)(1). Where a bidder or offeror certifies that it will comply with the applicable Buy America requirements, the bidder, offeror, or grantee is not eligible for a waiver of those requirements, except as provided in section 661.7(c)(3) in the case of a post-award non-availability waiver.'' FTA seeks comment on these proposed changes.

VIII. Certification Under Negotiated Procurement

As stated previously, under FTA's current Buy America regulations, grantees are required to ensure that contractors certify in their bids, as a condition of responsiveness, that they will comply with Buy America. 49 CFR 661.13(b). Moreover, contractors are not permitted to change their certifications ''after bid opening.'' 49 CFR 661.13(c). However, FTA allows bidders or offerors to correct an incomplete Buy America certificate or an incorrect certificate of noncompliance made through inadvertent or clerical error.

Reflecting the practice in public contracting that offerors may submit multiple offers in negotiated procurement processes, unlike in sealed bidding, FTA has issued the following guidance on its public Buy America Web site:

> In competitive negotiated procurements (*i.e.*, requests for proposals), certifications submitted as part of an initial proposal may be superseded by subsequent certifications submitted with revised proposals, and the certification submitted with the offeror's final revised proposal (or best and final offer) will control. However, where the grantee awards on the basis of initial proposals without discussion, the certification submitted with the initial proposal will control.

See ''Buy America: Frequently Asked Questions'' # 6 *http://www.fta.dot.gov/legal/buy_america/14422_17793_ENG_HTML.htm*

Consistent with FTA's current guidance, SAFETEA–LU requires that the Secretary issue a rule reflecting that, ''in any case in which a negotiated procurement is used, compliance with the Buy America requirements shall be determined on the basis of the certification submitted with the final offer.'' To implement this requirement, FTA proposes adding the following provision: ''(2) In the case of a negotiated procurement, a certification submitted as part of an initial proposal may be superseded by a subsequent certification(s) submitted with a revised proposal or offer. Compliance with the Buy America requirements shall be determined on the basis of the certification submitted with the final offer or final revised proposal. However, where a grantee awards on the basis of initial proposals without discussion, the certification submitted with the initial proposal shall control.'' FTA seeks comment on this proposal.

IX. Pre-Award and Post-Delivery Review of Rolling Stock Purchases

Under FTA's regulations at 49 CFR 663.37, generally, for purchases of more than 10 buses or rail vehicles, grantees must certify that an onsite inspector was present throughout the manufacturing process and that the grantee has received an inspector's report that accurately records all vehicle construction activities and explains how construction and operation of the vehicle meets specifications. However,

for orders of 10 or fewer buses, there is no requirement for a resident factor inspector, pursuant to 49 CFR 663.37(c). Under this provision, a grantee is only required to certify that it has visually inspected and road tested the vehicles and has determined that the vehicles meet contract specifications.

SAFETEA–LU amends section 5323(m) by mandating, in effect, that for rolling stock procurements of 20 vehicles or less serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or less, then the same post-delivery certification requirements which apply to procurements of ''10 or fewer buses,'' *i.e.* no resident factory inspector, shall likewise apply. FTA considers this requirement to be self-explanatory. To implement the change in section 5323(m), therefore, FTA proposes the following amendment: ''For procurements of (1) Ten or fewer buses; or (2) procurements of 20 vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or (3) any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.'' FTA seeks comment on this proposed change.

X. Miscellaneous

In addition to the requirements mandated in SAFETEA–LU, FTA proposes several changes to the Buy America regulations. The first of these involve minor corrections and clarifications. The second involve substantive changes.

A. Corrections and Clarifications

In Section 661.3 ''Definitions'' for the term ''act,'' FTA proposes deleting the clause ''section 337 of the Surface Transportation and Uniform Relocation Assistance of 1987 (Pub. L. 100–17),'' which follows ''as amended by,'' and replacing this with the clause ''the Safe Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (Pub. L. 109–59). Similarly, under Section 661.3, FTA proposes deleting the phrase ''STURRA means the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. No. 100–17) and replacing this with ''SAFETEA–LU means the Safe Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (Pub. L. 109–59).''

In Section 661.6 ''Certification requirement for procurement of steel or manufactured products,'' FTA proposes adding the word ''iron,'' after the word ''steel'' to reflect that iron, as well as steel and manufactured products, are subject to the certification requirement.

Moreover, the word ''offeror'' is a term of art for contractors who participate in negotiated procurements. The words ''or offeror'' are added after ''bidder,'' wherever it appears in Part 661, to reflect that grantees may elect to use negotiated methods of procurement on FTA funded projects. The term ''or offeror,'' is added, therefore, as follows: (1) In the example ''Certificate of Compliance With Section 165(a) and the ''Certificate for Non-Compliance With Section 165(a) in section 661.6; (2) in section 661.9(b) and (d); (3) in the example ''Certificate of Compliance With Section 165(b)(3) and the ''Certificate for Non-Compliance With Section 165(b)(3) in Section 661.12; (4) in section 661.13(b)(1), and in subparagraph (b)(1) a(i) (as redesignated); (4) in section 661.15(a), (b), (d), and (g); in section 661.17—in addition, the clause ''or the price of its final offer'' is added after ''original bid price'' in the second sentence; (5) in section 661.19.

Similarly, the words ''or offer'' are added after ''bid'' in Part 661, as follows: (1) in section 661.7(c)(1) and (d). In section 661.13(b), the clause ''or request for proposal (RFP)'' is added after the word ''bid'' in the first sentence. The words ''or offer'' are added after the word ''bid'' in the second sentence. In section 661.13(b)(1), the words ''of submission of a final offer,'' are added after the words ''bid opening'' in the first sentence. These proposed changes are made to reflect that grantees may elect to use negotiated methods of procurement on FTA funded projects. FTA seeks comment on these proposed changes.

B. Substantive Change Proposals

Communication Equipment

49 U.S.C. 5323(j)(2)(C) states that rolling stock includes ''train control, *communication,* and traction power equipment.'' (Emphasis added). Pursuant to this requirement, FTA drafted representative examples of train control, communication, and traction power equipment in the rolling stock section of the Buy America regulations as follows:

Train control equipment includes, but is not limited to, the following equipment:
(1) Mimic board in central control
(2) Dispatcher's console
(3) Local control panels
(4) Station (way side) block control relay cabinets
(5) Terminal dispatcher machines
(6) Cable/cable trays
(7) Switch machines
(8) Way side signals
(9) Impedance bonds
(10) Relay rack bungalows
(11) Central computer control
(12) Brake equipment
(13) Brake systems

Communication equipment includes, but is not limited to, the following equipment:
(1) Radios
(2) Space station transmitter and receivers
(3) Vehicular and hand-held radios
(4) PABX telephone switching equipment
(5) PABX telephone instruments
(6) Public address amplifiers
(7) Public address speakers
(8) Cable transmission system cable
(9) Cable transmission system multiplex equipment
(10) Communication console at central control
(11) Uninterruptible power supply inverters/rectifiers
(12) Uninterruptible power supply batteries
(13) Data transmission system central processors
(14) Data transmission system remote terminals
(15) Line printers for data transmission system
(16) Communication system monitor test panel
(17) Security console at central control

Traction power equipment includes, but is not limited to the following:
(1) Primary AC switch gear
(2) Primary AC transformer rectifiers
(3) DC switch gear
(4) Traction power console and CRT display system at central control
(5) Bus ducts with buses (AC and DC)
(6) Batteries
(7) Traction power rectifier assemblies
(8) Distribution panels (AC and DC)
(9) Facility step-down transformers
(10) Motor control centers (facility use only)
(11) Battery chargers
(12) Supervisory control panel
(13) Annunciator panels
(14) Low voltage facility distribution switch board
(15) DC connect switches
(16) Negative bus boxes
(17) Power rail insulators
(18) Power cables (AC and DC)
(19) Cable trays
(20) Instrumentation for traction power equipment
(21) Connectors, tensioners, and insulators for overhead power wire systems
(22) Negative drainage boards
(23) Inverters
(24) Traction motors
(25) Propulsion gear boxes
(26) Third rail pick-up equipment
(27) Pantographs

In years past, FTA offered guidance on a proposed federally funded contract for a public address/customer information screen (PA/CIS) to be awarded to the New York City Transit Authority (NYCT), which generated some controversy. In that case, FTA opined:

The Buy America provisions for rolling stock (which includes buses, rail cars, and ferries) require that at least 60 percent of the cost of all components and subcomponents

be of domestic origin and that final assembly of vehicles occur in the United States. The statutory provisions of Buy America expressly define rolling stock to include ''communication equipment.'' FTA regulations further provide a nonexhaustive listing of certain communication equipment considered to be rolling stock components, including public address amplifiers and speakers.

It is our understanding that the PA/CIS equipment will be placed in fixed transit stations, rather than on vehicles. However, pursuant to statute and regulation, communications equipment need not be on a vehicle, and is procured under the ''rolling stock'' rule not the ''manufactured products'' rule.

FTA's decision on the PA/CIS equipment procurement is consistent with longstanding agency precedent, including a **Federal Register** Notice from September 1983 which indicated that the particular equipment listed in section 661.11 ''include[s] both on-board and wayside equipment.'' 48 FR 41562. Nevertheless, FTA seeks public comment on whether the agency should continue to interpret the items listed in 661.11 as including wayside equipment. FTA also seeks public comment as to whether any items of equipment listed in section 661.11(t) (u) and (v), should be deleted, and whether any new items should be added to these lists, to reflect new technology.

In addition, FTA seeks public comment as to what constitutes ''communication equipment'' within the meaning of 5323(j)(2)(c) and section 661.11, and whether these terms should be defined in the regulation. FTA's concern on this matter arises as the technology utilized in the transit industry becomes more complex and sophisticated, and as categorical distinctions between product functions become increasingly blurred. To illustrate this point, it undoubtedly raises little or no dispute that an on-board radio or public address system constitutes ''communication equipment.''

However, FTA has also been called on to review for Buy America compliance such procurements as: a ''Mobile Data Communication System,'' ''Monitoring and Diagnostic equipment,'' a ''Service Management and Customer Information System,'' ''on-board and wayside LED signage systems,'' ''Automated Passenger Information System,'' etc. Such equipment often includes sophisticated networked microcomputers, processors, data screens, and other devices which ''communicate'' information to customers or transit personnel (such as for fares or schedules) in a broad sense—but also serves other functions such as counting passengers, tabulating revenues, and then ''communicating'' such information automatically by remote transmission to stakeholders for later processing and storage.

A review of this prior FTA guidance reveals instances where equipment which has as its primary function communication ''with or between people,'' such as for radios, constituted ''communication equipment'' under the rolling stock standard. Other cases demonstrate that where ''machine to machine'' interface constituted the primary function of the equipment, the manufactured product standard at section 661.7 applied. In determining what constitutes communication equipment, FTA believes that this distinction in the primary purpose of the equipment (*e.g.* ''with or between people'' versus ''machine to machine'' interface) should be maintained, with the former constituting communication equipment under the rolling stock standard. Nevertheless, to foster clarity in this area, FTA invites public comment and opinion on what constitutes ''communication equipment.''

XI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This NPRM is authorized under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59) amended Section 5323(j) and (m) of Title 49, United States Code and requires FTA to revise its regulations with respect to Buy America requirements.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This NPRM is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This NPRM is also nonsignificant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This NPRM imposes no new compliance costs on the regulated industry; it merely clarifies terms existing in the Buy America regulations and adds terms consistent with SAFETEA–LU.

C. Executive Order 13132

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This NPRM does not include any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this NPRM does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze regulations and proposals to assess their impact on small businesses and other small entities to determine whether the rule or proposal will have a significant economic impact on a substantial number of small entities. This NPRM imposes no new costs. Therefore, FTA certifies that this proposal does not require further analysis under the Regulatory Flexibility Act. FTA requests public comment on whether the proposals contained in this NPRM have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act of 1995

This NPRM does not propose unfunded mandates under the Unfunded Mandates Reform Act of 1995. If the proposals are adopted into a final rule, it will not result in costs of $100 million or more (adjusted annually for inflation), in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

G. Paperwork Reduction Act

This NPRM proposes no new information collection requirements.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this NPRM.

J. Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (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*.

List of Subjects in 49 CFR Part 661

Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

Amendment of 49 CFR Part 661

Accordingly, for the reasons described in the preamble, part 661 of Title 49 of the Code of Federal Regulations is proposed to be amended as follows:

PART 661—[AMENDED]

1. The authority citation for part 661 is revised to read as follows:

Authority: 49 U.S.C. 5323(j) (formerly sec. 165, Pub. L. 97–424; as amended by sec. 337, Pub. L. 100–17, sec. 1048, Pub. L. 102–240, sec. 3020(b), Pub. L. 105–178, and sec. 3023(i) and (k), P.L. 109–59); 49 CFR 1.51.

2. Revise § 661.3 to read as follows:

§ 661.3 Definitions.

As used in this part:

Act means the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424), as amended by the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (Pub. L. 109–59).

Administrator means the Administrator of FTA, or designee.

Component means any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into the end product at the final assembly location.

Contractor means:

(1) Any individual or other legal entity that directly or indirectly (*e.g.,* through an affiliate), submits bids or offers for or is awarded, or reasonably may be expected to submit bids or offers for or be awarded, a federally funded third party contract or subcontract under a federally funded third party contract; or, conducts business, or reasonably may be expected to conduct business, with an FTA grantee, as an agent or representative of another contractor; or

(2) Any party to a third party government contract other than the government.

End Product means:

(1) Any item subject to 49 U.S.C. 5323(j) that is to be acquired by a grantee, as specified in the overall project contract; or

(2) Any article, material, supply, or system, whether manufactured or unmanufactured, that is acquired for public use under a federally funded third party contract. A list of representative end products is included at Appendix A to this section.

FTA means the Federal Transit Administration.

Grantee means any entity that is a recipient of FTA funds.

Manufactured product means an item produced as a result of manufacturing process.

Manufacturing process means the application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end product functionally different from that which would result from mere assembly of the elements or materials.

Negotiated Procurement means a contract awarded using other than sealed bidding procedures

Rolling stock means transit vehicles such as buses, vans, cars, railcars, locomotives, trolley cars and buses, and ferry boats, as well as vehicles used for support services.

SAFETEA–LU means the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (Pub. L. 109–59).

Subcomponent means any article, material, or supply, whether manufactured or unmanufactured, that is one step removed from a component in the fabrication process and that is incorporated directly into a component.

United States means the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Appendix A to § 661.3—Representative End Products

The following is a list of items, as specified by grantees in third party contracts, which are representative end products that are subject to the requirements of Buy America. This list is not exclusive.

(1) *Rolling stock end products:* All individual items identified as rolling stock in § 661.3 (buses, vans, cars, railcars, locomotives, trolley cars, ferry boats, as well as vehicles used for support services); train control equipment or systems; communication equipment or systems; traction power equipment or systems.

(2) *Steel and iron end products:* Products and infrastructure projects made primarily of steel or iron or involving track work, including bridges; steel or iron structures; running rail and contact rail; turnouts.

(3) *Manufactured end products:* Fare collection equipment [non-system equipment] or systems; computers and computer systems; information, security, and data processing equipment or systems; lifts, hoists, and elevators; infrastructure projects not made primarily of steel or iron, including structures (terminals, depots, garages, and bus shelters), ties and ballast; contact rail not made primarily of steel or iron.

3. Revise § 661.6 to read as follows:

§ 661.6 Certification requirements for procurement of steel or manufactured products.

If steel, iron, or manufactured products (as defined in §§ 661.3 and 661.5 of this part) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in § 661.13(b) of this part.

Certificate of Compliance With Section 165(a)

The bidder or offeror hereby certifies that it will comply with the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations in 49 CFR part 661.

Date _____
Signature _____
Company Name _____
Title _____

Certificate for Non-Compliance With Section 165(a)

The bidder or offeror hereby certifies that it cannot comply with the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, but it may qualify for an exception to the requirement pursuant to section 165 (b)(2) or (b)(4) of the Surface Transportation Assistance Act of 1982 and regulations in 49 CFR 661.7.

Date _____
Signature _____
Company Name _____
Title _____

4. In § 661.7:

a. Revise paragraphs (b), (c)(1), and (d) and add new paragraph (c)(3) to read as set forth below; and

b. Amend appendix A to § 661.7 by removing paragraphs (b) and (c) and adding new paragraph (b) to read as set forth below.

§ 661.7 Waivers.

* * * * *

(b) Under the provision of section 165(b)(1) of the Act, the Administrator may waive the general requirements of section 165(a) if the Administrator finds that their application would be inconsistent with the public interest. In determining whether the conditions exist to grant this public interest waiver, the Administrator will consider all appropriate factors on a case-by-case basis, unless a general exception is specifically set out in this part. When granting a public interest waiver, the Administrator, as delegated, shall issue a detailed written statement justifying why the waiver is in the public interest. The Administrator shall publish this justification in the **Federal Register**, providing the public with a reasonable period of time for notice and comment.

(c) * * *

(1) It will be presumed that the conditions exist to grant this non-availability waiver if no responsive and responsible bid or offer is received offering an item produced in the United States.

* * * * *

(3) In those situations where materials become unavailable after contract award due to unforeseen circumstances beyond the control of the contractor or the grantee, the Administrator may grant a non-availability waiver under this paragraph (c), in any case in which a contractor has originally certified compliance with the Buy America requirements in good faith, but can no longer comply with its certification and contractual obligations due to commercial impossibility or impracticability. In making such a waiver request, the grantee will submit evidence of the contractor's good faith and evidence justifying the post-award waiver, such as information about the origin of the product or materials, invoices, or other relevant solicitation documents to the FTA Chief Counsel, as requested. In determining whether the conditions exist to grant this post-award non-availability waiver, the Administrator will consider all appropriate factors, including the status of other bidders or offerors in the procurement and the effect of any waiver on them, on a case-by-case basis.

(d) Under the provision of section 165(b)(4) of the Act, the Administrator may waive the general requirements of section 165(a) if the Administrator finds that the inclusion of a domestic item or domestic material will increase the cost of the contract between the grantee and its supplier of that item or material by more than 25 percent. The Administrator will grant this price-differential waiver if the amount of the lowest responsive and responsible bid or offer offering the item or material that is not produced in the United States multiplied by 1.25 is less than the amount of the lowest responsive and responsible bid or offer offering the item or material produced in the United States.

* * * * *

Appendix A to § 661.7—General Waivers

* * * * *

(b) Under the provisions of § 661.7 (b) and (c) of this part, a general public interest waiver from the Buy America requirements applies to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data.

* * * * *

5. In § 661.9, revise paragraphs (b) and (d) to read as follows:

§ 661.9 Application for waivers.

* * * * *

(b) A bidder or offeror who seeks to establish grounds for an exception must seek the exception, in a timely manner, through the grantee.

* * * * *

(d) FTA will consider a request for a waiver from a potential bidder, offeror, or supplier only if the waiver is being sought under § 661.7 (f) or (g) of this part.

* * * * *

6. In § 661.11, remove and reserve paragraph (s) and add a new Appendix D to read as follows:

§ 661.11 Rolling stock procedures.

* * * * *

Appendix D to § 661.11—Minimum Requirements for Final Assembly

(a) Rail Cars: In the case of the manufacture of a new, remanufactured, or overhauled rail car, final assembly would typically include, as a minimum, the following operations: Installation and interconnection of car bodies or shells, propulsion control equipment, propulsion cooling equipment, brake equipment, energy sources for auxiliaries and controls, heating and air conditioning, communications equipment, pneumatic and electrical systems, door systems, passenger seats, passenger interiors, destination signs, wheelchair lifts, motors, wheels, axles, and gear units, suspensions, frames, and chassis; the inspection and verification of all installation and interconnection work; and the in-plant testing of the stationary product to verify all functions.

(b) Buses: In the case of a new, remanufactured, or overhauled bus, final assembly would typically include, at a minimum, the installation and interconnection of car bodies or shells, the engine and transmission (drive train), axles, chassis, and wheels, including the cooling and braking systems; the installation and interconnection of the heating and air conditioning equipment; the installation of pneumatic and electrical systems, door systems, passenger seats, passenger grab rails, destination signs, wheelchair lifts; and road testing, final inspection, repairs and preparation of the vehicles for delivery.

7. Revise § 661.12 to read as follows:

§ 661.12 Certification requirement for procurement of buses, other rolling stock and associated equipment.

If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirement contained in Sec. 661.13(b) of this part.

Certificate of Compliance With Section 165(b)(3)

The bidder or offeror hereby certifies that it will comply with the requirements of section 165(b)(3), of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 CFR 661.11.

Date _____
Signature _____
Company Name _____
Title _____

Certificate for Non-Compliance with Section 165(b)(3)

The bidder or offeror hereby certifies that it cannot comply with the requirements of section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirement consistent with section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 CFR 661.7.

Date _____
Signature _____
Company Name _____
Title _____

7. In § 661.13, revise paragraphs (b) introductory text, (b)(1), (b)(2), and (c), add new paragraph (b)(1)(i), and add and reserve paragraph (b)(1)(ii) to read as follows:

§ 661.13 Grantee responsibility.

* * * * *

(b) The grantee shall include in its bid or request for proposal (RFP) specification for procurement within the scope of this part an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid or

offer a completed Buy America certificate in accordance with §§ 661.6 or 661.12 of this part, as appropriate.

(1) A bidder or offeror who has submitted an incomplete Buy America certificate or an incorrect certificate of noncompliance through inadvertent or clerical error (but not including failure to sign the certificate, submission of certificates of both compliance and non-compliance, or failure to submit any certification), may submit to the FTA Chief Counsel within ten (10) days of bid opening of submission of a final offer, a written explanation of the circumstances surrounding the submission of the incomplete or incorrect certification in accordance with 28 U.S.C. 1746, sworn under penalty of perjury, stating that the submission resulted from inadvertent or clerical error. The bidder or offeror will also submit evidence of intent, such as information about the origin of the product, invoices, or other working documents. The bidder or offeror will simultaneously send a copy of this information to the FTA grantee.

(i) The FTA Chief Counsel may request additional information from the bidder or offeror, if necessary. The grantee may not make a contract award until the FTA Chief Counsel issues his/her determination, except as provided in § 661.15(m).

(ii) [Reserved]

(2) In the case of a negotiated procurement, a certification submitted as part of an initial proposal may be superseded by a subsequent certification(s) submitted with a revised proposal or offer. Compliance with the Buy America requirements shall be determined on the basis of the certification submitted with the final offer or final revised proposal. However, where a grantee awards on the basis of initial proposals without discussion, the certification submitted with the initial proposal will control.

(c) Whether or not a bidder or offeror certifies that it will comply with the applicable requirement, such bidder or offeror is bound by its original certification (in the case of a sealed bidding procurement) or its certification submitted with its final offer (in the case of a negotiated procurement) and is not permitted to change its certification after bid opening or submission of a final offer. Where a bidder or offeror certifies that it will comply with the applicable Buy America requirements, the bidder, offeror, or grantee is not eligible for a waiver of those requirements, except as provided in section 661.7(c)(3) in the case of a post-award non-availability waiver.

8. In § 661.15, revise paragraphs (a), (b), (d), and (g) to read as follows:

§ 661.15 Investigation procedures.

(a) It is presumed that a bidder or offeror who has submitted the required Buy America certificate is complying with the Buy America provision. A false certification is a criminal act in violation of 18 U.S.C. 1001.

(b) Any party may petition FTA to investigate the compliance of a successful bidder or offeror with the bidder's or offeror's certification. That party (''the petitioner'') must include in the petition a statement of the grounds of the petition and any supporting documentation. If FTA determines that the information presented in the petition indicates that the presumption in paragraph (a) of this section has been overcome, FTA will initiate an investigation.

* * * * *

(d) When FTA determines under paragraph (b) or (c) of this section to conduct an investigation, it requests that the grantee require the successful bidder or offeror to document its compliance with its Buy America certificate. The successful bidder or offeror has the burden of proof to establish that it is in compliance. Documentation of compliance is based on the specific circumstances of each investigation, and FTA will specify the documentation required in each case.

* * * * *

(g) The grantee's reply (or that of the bidder or offeror) will be transmitted to the petitioner. The petitioner may submit comments on the reply to FTA within 10 working days after receipt of the reply. The grantee and the low bidder or offeror will be furnished with a copy of the petitioner's comments, and their comments must be received by FTA within 5 working days after receipt of the petitioner's comments.

* * * * *

9. Revise § 661.17 to read as follows:

§ 661.17 Failure to comply with certification.

If a successful bidder or offeror fails to demonstrate that it is in compliance with its certification, it will be required to take the necessary steps in order to achieve compliance. If a bidder or offeror takes these necessary steps, it will not be allowed to change its original bid price or the price of its final offer. If a bidder or offeror does not take the necessary steps, it will not be awarded the contract if the contract has not yet been awarded, and it is in breach of contract if a contract has been awarded.

10. Revise § 661.19 to read as follows:

§ 661.19 Sanctions.

A willful refusal to comply with a certification by a successful bidder or offeror may lead to the initiation of debarment or suspension proceedings under part 29 of this title.

11. Revise § 661.20 to read as follows:

§ 661.20 Rights of parties.

(a) A party adversely affected by an FTA action under this subsection shall have the right to seek review under the Administrative Procedure Act (APA), 5 U.S.C. section 702 *et seq.*

(b) Except as provided in paragraph (a) of this section, the sole right of any third party under the Buy America provision is to petition FTA under the provisions of § 661.15 of this part. No third party has any additional right, at law or equity, for any remedy including, but not limited to, injunctions, damages, or cancellation of the Federal grant or contracts of the grantee.

Issued in Washington, DC this 18th day of November, 2005.

David B. Horner,

Acting Deputy Administrator.

[FR Doc. 05–23323 Filed 11–22–05; 11:43 am]

BILLING CODE 4910–57–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 111505C]

Fisheries off West Coast States and in the Western Pacific; Bottomfish Fisheries; Overfishing Determination on Bottomfish Multi-Species Stock Complex; Hawaiian Archipelago

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

ACTION: Notice of intent to prepare a supplemental environmental impact statement; notice of scoping meetings; request for comment.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and regulations published by the Council on Environmental Quality (40 CFR part 1505), NMFS, in coordination with the Western Pacific Fishery Management Council (Council), is preparing a Supplemental Environmental Impact Statement (SEIS). The SEIS will supplement the Final Environmental Impact Statement (FEIS) Bottomfish and Seamount Groundfish Fishery of the

Western Pacific Region. The SEIS will analyze a range of alternatives to end overfishing in the bottomfish species complex in the Hawaiian Archipelago.

DATES: Public scoping meetings will be held: January 9, 2006, in Hilo, HI; January 10, 2006 in Kona, HI; January 11, 2006, in Kahului, HI; January 12, 2006 in Honolulu, HI; and January 13, 2006 in Lihue, HI. See **SUPPLEMENTARY INFORMATION** for specific times and locations of hearings. Comments on the issues, range of alternatives, and impacts that should be analyzed in the SEIS must be received by January 16, 2006.

ADDRESSES: Submit written comment or requests to be added to the mailing list for this SEIS to William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region, 1601 Kapiolani Blvd., Suite 1110, Honolulu HI 96814; or to Kitty Simonds, Executive Director, Council, 1164 Bishop St. Suite 1400, Honolulu, HI 96813. Comments or requests may also be sent via facsimile (fax) to the Pacific Islands Regional Office at (808) 973–2941 or to the Council at (808) 522–8228. You may also submit comments via email at *PirBottomfishNOI@noaa.gov* or through the Federal eRulemaking Portal at *http://www.regulations.gov*. The Council's scoping document on the overfishing determination for the bottomfish species complex in the Hawaiian Archipelago may also be obtained from the Council's office at the address above or via the Internet at *http://www.wpcouncil.org*.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, Regional Administrator, NMFS, (808) 973–2937 or Kitty Simonds, Executive Director, Council, (808) 522–8220.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires the Secretary of Commerce to report annually on the status of fisheries within each regional fishery management council's geographical area of authority (16 U.S.C. 1854(e)(1)). According to the guidelines for National Standard 1 of the Magnuson-Stevens Act (50 CFR 600.310), fishery stock status is assessed with respect to two status determination criteria, one of which is used to determine whether a stock is overfished and the second of which is used to determine whether the stock is subject to overfishing. A stock is subject to overfishing if the fishing mortality rate exceeds the maximum fishing mortality threshold (MFMT) for one year. The MFMT for particular stocks are specified in fishery management plans.

According to Amendment 6 Supplement to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Bottomfish FMP), effective July 3, 2003 (68 FR 46112, August 5, 2003), the MFMT for bottomfish stock complexes managed under the Bottomfish FMP would be exceeded if the fishing mortality rate exceeded the rate associated with maximum sustainable yield (MSY). The most recent assessment of the bottomfish species complex presented in Appendix 5 of the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region 2003 Annual Report indicated that, based on data through 2002, fishing effort (proxy for fishing mortality) exceeded the rate associated with MSY.

Appendix 5 in the 2003 Annual Report indicates that the main Hawaiian islands (MHI) is where the excessive fishing mortality problem occurs. The Northwestern Hawaiian Islands (NWHI) bottomfish fishery is managed under an Bottomfish FMP-authorized limited entry program, separated into two limited entry zones (Hoomalu and Mau). In 2004, nine vessels participated in the NWHI bottomfish fishery. In contrast, the MHI is an open access fishery regulated by the State of Hawaii with over 3,700 vessels registered with the State of Hawaii to fish for bottomfish. Therefore, it is likely that reducing fishing mortality in the MHI would be the most effective means to end overfishing in the Hawaiian Archipelago.

On May 27, 2005, the Pacific Islands Regional Administrator, NMFS, notified the Council that NMFS had determined that the bottomfish species complex around the Hawaiian Archipelago to be in a state of overfishing (70 FR 34552, June 14, 2005). Section 304 (e) (3) of the Magnuson-Stevens Act states that ''[w]ithin one year of an identification [of overfishing] . . . the appropriate Council . . . shall prepare a fishery management plan, plan amendment, or proposed regulations for the fishery . . . to end overfishing in the fishery . . . .''

As required by the Magnuson-Stevens Act, the Council is required to prepare and submit to NMFS a fishery management plan amendment to end overfishing of the bottomfish complex around the Hawaiian Archipelago.

Significant issues to be analyzed in the SEIS will include, but will not necessarily be limited to, effects on targeted species, bycatch, federally listed threatened and endangered species, Hawaii state fishery management policies, fishing for bottomfish in State waters, incidental catch of bottomfish species in other fisheries, and essential fish habitat. Other issues will be health and safety, water quality, environmental justice, cultural and socio-economic, and any other issues identified through scoping and public involvement.

Alternatives that may be considered in detail in the SEIS are likely to include, but will not necessarily be limited to:

Alternative 1: No Action: In 1998 the State of Hawaii created bottomfish closed areas to reduce effort in the MHI. The closure applied to seven deep water bottomfish species (onaga, ehu, gindai, kalekale, hapuupuu, opakapaka, and lehi) commonly targeted using deep handline gear. Since 1998 a consistent downward trend in effort has occurred in the bottomfish fishery in the MHI. This alternative continues to support those closed areas which extend into Federal waters.

Alternative 2: Alternative 2 would overlay Federal closures on the State of Hawaii's Restricted Fishing Areas in Federal waters. This action would provide for Federal enforcement of the closures in addition to current State of Hawaii's enforcement.

Alternative 3: This alternative would close the Federal waters around Penguin and Middle Banks to bottomfishing. This alternative would prohibit the targeting of, the landing of, and the sale of the seven deep slope bottomfish species identified in Alternative 1 from Penguin and Middle Banks. The closure would apply to all recreational and commercial vessels.

Alternative 4: Alternative 4 would create a MHI bottomfish fishery seasonal closure. This alternative would prohibit the targeting of, the landing of, and the sale of the seven deep slope bottomfish species identified in Alternative 1 from the MHI. Closure would apply to all recreational and commercial vessels. Under this alternative, the federally permitted NWHI bottomfish fishery will remain open during MHI closures.

Alternative 5: This alternative would establish total allowable catch for all commercial fishing boats in the MHI.

Alternative 6: This alternative would establish individual fishing quotas for all commercial fishing boats in the MHI. Recreational vessels would continue to be subject to the catch limits established by the State of Hawaii.

Alternative 7: This alternative combines the use of seasonal closures (Alternative 4) and individual fishing quotas (Alternative 6) for commercial vessels during the seasonal closure.

Alternative 8: This alternative combines use of seasonal closures (Alternative 4) and a partial closure of Penguin Banks (Alternative 3).

The public is invited to assist in developing the scope of alternatives to be analyzed, and to provide other relevant information on the subject of ending overfishing of this complex.

Dates, Times, and Locations for Public Scoping Meetings

1. Hilo, HI – Monday, January 9, 2006, from 6–9 p.m. at the University of Hawaii-Hilo Campus Center, 200 W. Kawili St., Hilo, Hawaii 96720;

2. Kona, HI – Tuesday, January 10, 2006, from 6–9 p.m. at the King Kamehameha Hotel, 75–5660 Palani Rd., Kona, HI 96740;

3. Maui, HI – Wednesday, January 11, 2006, from 6–9 p.m. at the Maui Beach Hotel, 170 Kaahumanu Ave., Kahului, HI 96732;

4. Oahu, HI – Thursday, January 12, 2006, from 6–9 p.m. at the Ala Moana Hotel, 410 Atkinson Dr., Honolulu, HI 96815;

5. Kauai, HI – Friday, January 13, 2006, from 6–9 p.m. at Chiefess Kamakahelei Middle School, 4431 Nuhou St., Lihue, HI 96766.

To receive a copy of the Draft SEIS, please provide your name and address in writing to the point of contact identified in this notice. An electronic version of the Draft SEIS, when completed, will also be available by internet at the following sites: *http://swr.nmfs.noaa.gov/pir* or at *www.wpcouncil.org*. or

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least five days prior to the meeting date.

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

Dated: November 21, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–23363 Filed 11–25–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 112205A]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting and public hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 130th meeting to consider and take action on fishery ecosystem plans for the Western Pacific Region. The Council will also hold public hearings throughout Hawaii the week prior to its 130th meeting, as well as during the 130th meeting.

DATES: The 130th Council meeting and the public hearings will be held December 20, 2005, and December 12–15, 2005, respectively. For specific dates, times and locations of the public hearings, and the agenda for the 130th Council meeting, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The 130th Council meeting will be held at the Council's office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813. The 130th Council meeting telephone conference call-in-number is: (866)867–8289, passcode 1683776. For Guam and International Participants, the call-in-number is: (813)376–1442, passcode 1683776.

The public hearings will held in Hilo, HI; Kailua-Kona, HI; Lihue, HI; Kahului, HI; and Honolulu, HI. For specific dates, times and locations, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808)522–8220; FAX: (808)522–8226.

SUPPLEMENTARY INFORMATION:

Background Information

The Western Pacific Fishery Management Council has recently initiated a shift towards ecosystem approaches to fisheries management by drafting place-based fishery ecosystem plans (FEPs)to amend and reorganize the existing species-based fishery management plans (FMPs). The draft FEPs include the: (a) American Samoa Archipelago FEP, (b) Hawaii Archipelago FEP, (c) Mariana Archipelago FEP, (d) Pacific Pelagic FEP, and e) Pacific Remote Island Areas FEP.

Recognizing that implementation of a successful ecosystem approach to fisheries management will require incremental steps as well as broad public and governmental agency collaboration, these FEPs lay the institutional framework on which further fisheries ecosystem management measures will be built. Pending final action by the Council and the approval of the FEPs by the Secretary of Commerce, the current FMP regulations will be reorganized and consolidated into place-based regulations specific to each FEP area however, no substantive changes to current regulations will occur at this reorganization stage.

In October and November 2005, public hearings on the draft FEPs were conducted throughout the Western Pacific Region in the following areas: Tutuila, AS; Saipan, CNMI; Tinian, CNMI; Rota, CNMI; Honolulu, HI; and Tumon Bay, GU. At the 129th Council meeting held November 8–11, 2005, in Tumon Bay, Guam, the Council recommended to tentatively adopt the draft FEPs and to consider final approval at the next Council meeting.

130th Council Meeting Agenda

Tuesday December 20, 2005, 12 noon Hawaii Standard Time

1. Introductions
2. Approval of Agenda
3. Western Pacific Fishery Ecosystem Plans
   A. Final Action on FEP Objectives
   B. Final Action on FEP Boundaries
   C. Final Action FEP Management Unit Species designations
   D. Final Action on Structure of Council Advisory Bodies
   E. Final Action on Regional and International Coordination and Community Participation
4. Public Hearing
5. Council Discussion and Action
6. Update on Hawaii Bottomfish Overfishing
7. Other Business

Dates, Times, and Locations of Public Hearings

(1) Hilo, HI – Monday, December 12, 2005, from 6–9 p.m. at the University of Hawaii-Hilo Campus Center, 200 W. Kawili St., Hilo, HI 96720;

(2) Kailua-Kona, HI – Tuesday, December 13, 2005, from 6–9 p.m. at the King Kamehameha Hotel, 75–5660 Palani Rd., Kona, HI 96740;

(3) Kauai, HI – Wednesday, December 14, 2005, from 6–9 p.m. at Chiefess Kamakahelei Middle School, 4431 Nuhou St., Lihue, HI 96766.

(4) Maui, HI – Thursday, December 15, 2005, from 6–9 p.m. at the Maui Beach Hotel, 170 Kaahumanu Ave., Kahului, HI 96732;

(5) Oahu, HI – Tuesday, December 20, 2005, at 12 noon at the 130th Council meeting at the Council's office, 1164 Bishop St., Ste. 1400, Honolulu, HI 96813;

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during its 130th meeting. Council action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808)522–8220 (voice) or (808)522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: November 22, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–23364 Filed 11–25–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 70, No. 227

Monday, November 28, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. DA–06–02]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision of a currently approved information collection for the Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products and the Certification of Sanitary Design and Fabrication of Equipment Used in the Slaughter, Processing, and Packaging of Livestock and Poultry Products.

DATES: Comments received by January 27, 2006 will be considered.

ADDITIONAL INFORMATION OR COMMENTS: Contact Reginald L. Pasteur, USDA/AMS/Dairy Programs, Dairy Standardization Branch, Room 2746-South Building, 1400 Independence Avenue, SW., Washington, DC 20250–0230; Tel: (202) 720–7473, Fax: (202) 720–2643 or via e-mail at *reginald.pasteur@usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements Under Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products.

OMB Number: 0581–0126.

Expiration Date of Approval: August 31, 2006.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The dairy grading program is a voluntary user fee program authorized under the Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621 *et seq.*). The regulations governing inspection and grading services of manufactured or processed dairy products are contained in 7 CFR part 58. In order for a voluntary inspection form to perform satisfactorily, there must be written requirements and rules for both Government and industry. The information requested is used to identify the product offered for grading; to identify a request from a manufacturer of equipment used in the dairy, meat or poultry industries for evaluation regarding sanitary design and construction; to identify and contact the party responsible for payment of the inspection, grading or equipment evaluation fee and expense; and to identify applicants who wish to be authorized to display official identification on product packaging materials, equipment, utensils, or on descriptive or promotional materials.

Estimate of Burden: Public reporting burden for this record keeping is estimated to average .0585 hours per response.

Respondents: Distributors, manufacturers, and packers of butter and cheese. Manufacturers of processing equipment used in the dairy, meat and poultry industries.

Estimated Number of Respondents: 400.

Estimated Total Annual Burden on Respondents: 360.

Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should reference OMB No. 0581–0126 and the Dairy Inspection and Grading Program and be sent to the Office of the Deputy Administrator, USDA/AMS/Dairy Programs, Room 2968–S, 1400 Independence Avenue, SW., Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matte of public record.

Authority: 7 U.S.C 1621–1627.

Dated: November 21, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–23328 Filed 11–25–05; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Farm Service Agency

U.S. Warehouse Act Fees

AGENCY: Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth a schedule increasing the annual operational fee warehouse operators are charged under the United States Warehouse Act (USWA). This action is needed to increase revenue to cover operational costs projected for operations under the USWA in fiscal year 2006. This notice does not change any of the other various license or inspection fees charged under the USWA.

DATE: *Effective Date:* January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Roger Hinkle, USWA Program Manager, Warehouse and Inventory Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA), 1400 Independence Avenue, SW., STOP 0553, Washington, DC 20250–0553, telephone: (202) 720–7433; FAX: (202) 690–3123; e-mail: *Roger.Hinkle@usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: The Secretary of Agriculture has the

authority to license public warehouses and assess warehouse operator fees under the USWA (7 U.S.C. 241 *et seq.*) Warehouse operators licensed under the USWA understand that fees will be imposed to cover the costs of administering the program. Specifically, section 4 of the USWA (7 U.S.C. 243) and the regulations issued pursuant to the USWA, located at 7 CFR part 735, mandate the imposition of fees for USWA-licensed warehouses. The USWA provides for licensing of public warehouse operators that are in the business of storing agricultural products; examination of such federally-licensed warehouses, issuance of regulations governing the establishment and maintenance of electronic systems, and collection of fees to sustain the USWA warehouse licensing and examination programs. FSA is raising USWA annual operational fees charged to licensed warehouses in order to assure the recovery of operational costs projected for USWA activities in fiscal year 2006. The fiscal year 2006 fee adjustment reflects a 5.0 percent increase in the annual fees. Other license and inspection fees charged under the USWA are not currently being increased.

USWA fees vary by type of warehouse and were last amended effective October 1, 2000, (65 FR 39347, June 26, 2000). None of the fee increases for any particular type of warehouse exceeded 2.0 percent, and such fees varied based on FSA's direct costs with respect to warehouse examinations for that type of warehouse. The schedule below sets out all of the relevant fees and charges for licensing and examination and reflects the increased annual fees noted above.

USWA Schedule for License, Inspection and Annual Operational Fees To Be Paid by Warehouse Operators

Warehouse and Service License Fees

The fee for original issuance, reissuance, or duplication of a license for cotton, grain, tobacco, wool, dry beans, nut, sweeteners, and cottonseed is $80 for each license issued. The fee charged to license individuals to inspect, sample, grade, classify, or weigh commodities is $35 for each service license issued.

Warehouse Annual and Inspection Fees

These fees are shown in the following tables by agricultural product. Inspection fees are assessed for each original examination or inspection, or reexamination or reinspection for modification of an existing license. Annual fees are assessed independently of the inspection and license fees set forth in the preceding paragraph.

COTTON

[In bales]

Licensed capacity	Annual fee for each warehouse location with a CCC storage agreement	Annual fee for each warehouse location without a CCC storage agreement
1–20,000	$585	$1,170
20,001–40,000	770	1,540
40,001–60,000	940	1,880
60,001–80,000	1,180	2,360
80,001–100,000	1,470	2,940
100,001–120,000	1,760	3,520
120,001–140,000	2,055	4,110
140,001–160,000	2,350	4,700
160,001+	* 2,350	** 4,700

* Plus $60 per 5,000 bale capacity above 160,000 bales or fraction thereof.
** Plus $115 per 5,000 bale capacity above 160,000 bales or fraction thereof.

Inspection fees will be charged at the rate of $17 for each 1,000 bales of licensed capacity, or fraction thereof, but in no case less than $170 nor more than $1,700.

GRAIN

[In bushels]

Licensed capacity	Annual fee for each warehouse location with a CCC storage agreement	Annual fee for each warehouse location without a CCC storage agreement
1–150,000	$155	$310
150,001–250,000	310	620
250,001–500,000	455	910
500,001–750,000	615	1,230
750,001–1,000,000	765	1,530
1,000,001–1,200,000	920	1,840
1,200,001–1,500,000	1,070	2,140
1,500,001–2,000,000	1,220	2,440
2,000,001–2,500,000	1,375	2,750
2,500,001–5,000,000	1,525	3,050
5,000,001–7,500,000	1,685	3,370

GRAIN—Continued

[In bushels]

Licensed capacity	Annual fee for each warehouse location with a CCC storage agreement	Annual fee for each warehouse location without a CCC storage agreement
7,500,001–10,000,000	1,840	3,680
10,000,001+	* 1,840	** 3,680

* Plus $50 per million bushels above 10,000,000 or fraction thereof.
** Plus $95 per million bushels above 10,000,000 or fraction thereof.

Inspection fees will be charged at the rate of $17 for each 10,000 bushels of licensed capacity, or fraction thereof, but in no case less than $170 nor more than $1,700.

NUTS

[In short tons]

Licensed capacity	Annual fee for each warehouse location with a CCC storage agreement	Annual fee for each warehouse location without a CCC storage agreement
1–4,500	$250	$500
4,501–7,500	410	820
7,501–15,000	580	1,160
15,001–22,500	745	1,490
22,501–30,000	905	1,810
30,001–36,000	1,060	2,120
36,001–45,000	1,220	2,440
45,001–60,000	1,375	2,750
60,001–75,000	1,535	3,070
75,001–150,000	1,690	3,380
150,001–225,000	1,840	3,680
225,001+	* 1,995	** 3,990

* Plus $11 per 100 short tons above 225,000 short tons or fraction thereof.
** Plus $19 per 100 short tons above 225,000 short tons or fraction thereof.

Inspection fees will be charged at the rate of $8.50 for each 100 short tons of licensed capacity, or fraction thereof of peanuts and $15 for each 1,000 hundredweight, or fraction thereof, of other nuts, but in no case less than $170 nor more than $1,700.

DRY BEANS

(In hundredweight)

Licensed capacity	Annual fee
100–90,000	$840
90,001–150,000	1,170
150,001–300,000	1,520
300,001–450,000	1,855
450,001–600,000	2,185
600,001–720,000	2,515
720,001–900,000	2,860
900,001–1,200,000	3,200
1,200,001–1,500,000	3,525
1,500,001–3,000,000	3,860
3,000,001+	* 4,200

* Plus $1.40 per 1,000 hundredweight above 3,000,000 or fraction thereof.

Inspection fees will be charged at the rate of $17 for each 1,000 hundredweight of licensed capacity, or fraction thereof, but in no case less than $170 nor more than $1,700.

Tobacco and Wool (Currently Inactive)

Annual fee: $17 for each 100,000 pounds of licensed capacity, or fraction thereof, but in no case less than $680.

Inspection fee: $17 for each 100,000 pounds of licensed capacity, or fraction thereof, but in no case less than $170 nor more than $1,700.

Sweeteners

Annual fee: $6.50 for each 5,000 gallons of liquid or 55,000 pounds of dry capacity, or fraction thereof, but in no case less than $680.

Inspection fee: $6.50 for each 5,000 gallons of liquid or 55,000 pounds of dry capacity, or fraction thereof, but in no case less than $170 nor more than $1,700.

Cottonseed

Annual fee: $17 for each 1,000 short tons of licensed capacity, or fraction thereof, but in no case less than $680.

Inspection fee: $17 for each 1,000 short tons of licensed capacity, or fraction thereof, but in no case less than $170 nor more than $1,700.

Signed in Washington, DC, on November 16, 2005.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. 05–23353 Filed 11–25–05; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lewis and Clark County Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Helena National Forest's Lewis

and Clark County Resource Advisory Committee will meet on Monday December 12 from 3 p.m. until 6 p.m. in Helena, Montana, for its second business meeting. The meeting is open to the public.

DATES: Monday, December 12, 2005.

ADDRESSES: The meeting will be held in the conference room at the Helena Chamber of Commerce, 225 Cruse Avenue, Helena, MT 59601.

FOR FURTHER INFORMATION CONTACT: Duane H. Harp, Designated Forest Official (DFO), District Ranger, Helena Ranger District, Helena National Forest, at (406) 449–5490.

SUPPLEMENTARY INFORMATION: Agenda topics for this meeting include administrative information for members and public comment as authorized under Title II of Public Law 106–393. If the meeting location is changed, notice will be posted in local newspaper, including the Helena Independent Record.

Dated: November 21, 2005.

Sharon A. Scott,

Acting District Ranger, Helena National Forest.

[FR Doc. 05–23358 Filed 11–25–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting.

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will conduct a business meeting, which is open to the public.

DATES: Tuesday, November 29, 2005, beginning at 10:30 a.m.

ADDRESSES: Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review and approval of project proposals, and is an open public forum.

FOR FURTHER INFORMATION CONTACT: Doug Gochnour, Designated Federal Officer, at 208–392–6681 or e-mail *dgochnour@fs.fed.us.*

Dated: November 21, 2005.

Richard A. Smith,

Forest Supervisor, Boise National Forest.

[FR Doc. 05–23360 Filed 11–25–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal from Brazil: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 28, 2005.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, telephone: (202) 482–5831; Import Administration, International Trade Administration, U.S. Department of Commerce, 14TH Street and Constitution Ave., NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2005, the Department of Commerce (Department) published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on silicon metal from Brazil for the period of review (POR) July 1, 2004, through June 30, 2005. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 38099 (July 1, 2005). On July 29, 2005, Globe Metallurgical Inc., and Elkem Metals Company, producers of the domestic like product and interested parties in this proceeding, submitted timely requests that the Department conduct an administrative review of the antidumping duty order on silicon metal from Brazil for the POR covering Camargo Correa Metais S.A. (CCM), Ligas de Aluminio S.A. (LIASA), and Companhia Ferroligas de Minas Gerais-minasligas (Minasligas). The Department initiated an administrative review for CCM, LIASA, and Minasligas in August 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 51009 (August 29, 2005). On September 1, 2005, the Department released the antidumping duty questionnaire to CCM, LIASA, and Minasligas. On September 2, 2005, in response to the Department's antidumping questionnaire, CCM, LIASA, and Minasligas submitted letters certifying that they had no sales or exports of subject merchandise to the United States during the POR. See Letters from CCM, LIASA, and Minasligas, regarding the ''Fourteenth Administrative Review of Silicon Metal from Brazil'' (September 2, 2005).

On October 19, 2005, the Department issued a memorandum stating that it had confirmed CCM, LIASA, and Minasligas' statements with U.S. Customs and Border Protection (CBP) and that it intended to rescind the administrative review. See Memorandum to Holly A. Kuga, Senior Office Director, AD/CVD Operations, Office 4, through Mark Manning, Acting Program Manager, AD/CVD Operations, Office 4, from Maisha Cryor, Analyst, AD/CVD Operations, Office 4, regarding ''*Rescission of the Antidumping Duty Administrative Review of Silicon Metal from Brazil for the Period of Review July 1, 2004, through June 30, 2005*,'' dated October 19, 2005 (Rescission Memorandum). The Rescission Memorandum was released to all interested parties, who were invited to comment on the Department's intent to rescind the administrative review. *Id.* The Department did not receive comments from any interested party.

Scope of the Order

The merchandise covered by this order is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this order is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTSUS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTSUS) is not subject to the order. Although the HTSUS item numbers are provided for convenience and for customs purposes, the written description remains dispositive.

Rescission of Administrative Review

In accordance with section 351.213(d)(3) of the Department's regulations, and consistent with our practice, we are rescinding this review because CCM, LIASA, and Minasligas were the only companies for which a review was requested and none of these companies had sales or exports of

subject merchandise during the POR. *See Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results and Partial Rescission of Antidumping Administrative Review*, 63 FR 35190, 35191 (June 29, 1998).

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This notice is published in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: November 19, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–6580 Filed 11–25–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

United States Travel and Tourism Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of the postponement of an open meeting.

SUMMARY: To provide additional information regarding a **Federal Register** notice published November 14, 2005, Volume 70, Number 218, regarding the United States Travel and Tourism Advisory Board (''Board'') intent to hold a meeting on December 1, 2005, in New Orleans, Louisiana, to discuss topics related to the travel and tourism industry. The meeting has been postponed and will be rescheduled.

Date: TBA.

Time: TBA.

Address: TBA.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, U.S. Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–1124, *Marc.Chittum@mail.doc.gov.*

Dated: November 21, 2005.

J. Marc Chittum,

Designated Federal Officer, U.S. Travel and Tourism Advisory Board.

[FR Doc. 05–23422 Filed 11–23–05; 1:03 pm]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112205D]

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Trawl Survey Advisory Panel, composed of representatives from the National Marine Fisheries Service's Northeast Fisheries Science Center (NEFSC), the Mid-Atlantic Fishery Management Council (MAFMC), the New England Fishery Management Council (NEFMC), and several independent scientific researchers, will hold a public meeting.

DATES: December 14, 2005, from 12 p.m. to 5 p.m. and December 15, 2005, from 8:30 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at the Sheraton Four Points, Philadelphia Airport, 4101 Island Avenue, Philadelphia, PA 19153 telephone 215–365–6000.

Council Address: Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904, telephone 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review the results of the October Northeast Fisheries Science Center's experimental trawl survey cruise and begin to develop and evaluate survey protocols for the new survey.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jan Saunders at the Mid-Atlantic Council Office at least five days prior to the meeting date.

Dated: November 22, 2005.

Tracey L. Thompson,

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

[FR Doc. E5–6554 Filed 11–25–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112205C]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; committee meeting.

SUMMARY: The New England Fishery Management Council's (Council) Groundfish Oversight Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Monday, December 12, 2005, from 9:30 a.m.–5 p.m.

ADDRESSES: *Meeting address*: The meeting will be held at the Holiday Inn, One Newbury Street, Route 1, Peabody, MA 01960; telephone: (978) 535–4600.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978)465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

Agenda for Monday, December 12, 2005

1. The Committee will continue development of Framework Adjustment 42 (FW 42) to the Northeast Multispecies Fishery Management Plan. FW 42 adjusts management measures in order to continue the rebuilding programs established by Amendment 13. After receiving a report from the Groundfish Advisory Panel, the Committee will further refine the proposed management measures as necessary. They will also discuss the application for formation of a fixed gear sector. Finally, the Committee may begin to develop recommendations on specific measures for the Council's consideration at a future meeting. The Committee may also consider other business.

Although non-emergency issues not contained in this agenda may come

before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people withdisabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: November 22, 2005.

Tracey L. Thompson,

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

[FR Doc. E5–6553 Filed 11–25–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112205B]

Fisheries of the Gulf of Mexico; Fisheries of the South Atlantic; Southeastern Data, Assessment, and Review (SEDAR); Gulf of Mexico Gag Grouper; South Atlantic Gag Grouper

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

ACTION: Notice of SEDAR Workshops for Gulf of Mexico and South Atlantic gag grouper.

SUMMARY: The SEDAR assessments of the Gulf of Mexico stock of gag grouper and the South Atlantic stock of gag grouper will consist of a series of three workshops: a Data Workshop, an Assessment Workshop, and a Review Workshop. This is the tenth SEDAR. See **SUPPLEMENTARY INFORMATION**.

DATES: The Data Workshop will take place January 23–27, 2006; the Assessment Workshop will take place May 1–5, 2006; the Review Workshop will take place June 26–30, 2006. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The Data Workshop will be held at the Doubletree Guest Suites, 181 Church Street, Charleston SC 29401. (877) 408–8733. The Assessment Workshop will be held at the Wyndham Grand Bay, 2669 South Bayshore Drive, Miami FL 33133. (305) 868–9600. The Review Workshop will be held at the Doubletree Buckhead, 3342 Peachtree Road NE, Atlanta GA 30326. (404) 231–1234.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Gulf of Mexico Fishery Management Council (GMFMC), 3018 North U. S. Highway 301, Tampa, FL 33619. Phone: (813) 228–2815 or (888) 833–1844. John Carmichael, SEDAR Coordinator, 1 Southpark Circle #306, Charleston, SC 29414. (843) 571–4366.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR includes three workshops: 1) Data Workshop, 2) Stock Assessment Workshop and 3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Stock Assessment Workshop is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop.

The products of the Review Workshop are a Consensus Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data, and an Advisory Report summarizing stock status and recommending management criteria. Participants for SEDAR Workshops, appointed by the regional Fishery Management Councils, NOAA Fisheries' Southeast Regional Office (SERO), and NOAA Fisheries' Southeast Fisheries Science Center (SEFSC), include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and Non-governmental Organizations (NGOs); International experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 10 Workshop Schedule:

January 23–27, 2006; SEDAR 10 Data Workshop

January 23, 2006, 1 p.m.–8 p.m., January 24–26, 2006, 8 a.m.–8 p.m., and January 27, 2006, 8 a.m.–1 p.m. An assessment data set and associated documentation will be developed during the Data Workshop. Participants will evaluate all available data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance.

May 1–5, 2006 SEDAR 10 Assessment Workshop

May 1, 2006, 1 p.m.–8 p.m., May 2–4, 2006, 8 a.m.–8 p.m., and May 5, 2006, 8 a.m.–1 p.m. Using datasets provided by the Data Workshop, participants will develop population models to evaluate stock status, estimate population benchmarks and Sustainable Fisheries Act criteria, and project future conditions. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters. Participants will prepare a workshop report, compare and contrast various assessment approaches, and determine whether the assessments are adequate for submission to the review panel.

June 26–30, 2006. SEDAR 10 Review Workshop

June 26, 2006, 1 p.m.–8 p.m., June 27–29, 2006, 8 a.m.–8 p.m., June 30, 2006, 8 a.m.–1 p.m.

The Review Workshop is an independent peer review of the assessment developed during the Data and Assessment Workshops. Workshop Panelists will review the assessment and document their comments and recommendations in a Consensus Summary. Panellists will summarize recommended population parameter estimates in an Advisory Report.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Dated: November 22, 2005.

Tracey L. Thompson,

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

[FR Doc. E5–6552 Filed 11–25–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Release From Embargo of Certain Chinese Textiles and Apparel Goods That Were Entered for Warehouse, Sent to General Order, or Admitted to a Foreign Trade Zone, Before November 8, 2005

AGENCY: Committee for the Implementation of Textiles Agreements (CITA).

ACTION: Directive to Commissioner, Bureau of Customs and Border Protection.

EFFECTIVE DATE: November 28, 2005.

FOR FURTHER INFORMATION CONTACT: Philip J. Martello, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Pursuant to the Memorandum of Understanding between the Governments of the United States of America and the People's Republic of China Concerning Trade in Textile and Apparel Products, signed and dated November 8, 2005 (''Memorandum of Understanding''), CITA directs the U.S. Bureau of Customs and Border Protection to allow entry of certain goods in embargo.

In the letter published below, the Chairman of CITA directs the Commissioner, U.S. Customs and Border Protection, to allow entry, or withdrawal from warehouse, for consumption, from November 28 through December 2, 2005, of all Chinese origin goods that (1) currently are in a bonded warehouse within the customs territory of the United States or in a foreign trade zone established under the Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81a, *et seq.*); (2) were entered for warehouse or sent to General Order within the customs territory of the United States, or admitted to a foreign trade zone established under the Foreign Trade Zones Act of 1934, as amended, before November 8, 2005; and (3) were, at the time of export from China, subject to a quantitative restraint for one of the categories listed below, due to the application of Paragraph 242 of the *Report of the Working Party for the Accession of China to the World Trade Organization.*

Category	Restraint period
338/339	May 23, 2005–December 31, 2005.
347/348	May 23, 2005–December 31, 2005.
352/652	May 23, 2005–December 31, 2005.
638/639	May 27, 2005–December 31, 2005.
647/648	May 27, 2005–December 31, 2005.

This release of certain embargoed goods excludes socks in categories 332/432/632part. See Memorandum of Understanding at n.3. Shipments allowed entry pursuant to the directive below will not be subject to staged entry limits.

Any other shipments of goods from China subject to the quantitative restraints for the categories and restraint periods above, or to other quantitative restraints for goods exported from China prior to January 1, 2006, shall remain subject to the restraints previously established, and to staged entry procedures as laid out in the directives dated April 21, 2005, and November 4, 2005. This includes socks and other categories not listed above, and any shipment exported from China on or after November 8, 2005. Shipments of any Chinese-origin textile or apparel goods exported before January 1, 2006 are not subject to the quantitative restraints established in Annex I of the Memorandum of Understanding of November 8, 2005. CITA will publish instructions to the U.S. Customs and Border Protection concerning those restraints in a separate notice.

Dated: November 23, 2005.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner, Bureau of Customs and Border Protection, Washington, DC 20229

Dear Commissioner: Pursuant to the Memorandum of Understanding between the Governments of the United States of America and the People's Republic of China, Concerning Trade in Textiles and Apparel Products, dated November 8, 2005, you are directed, effective on November 28, 2005, and for the period November 28, 2005 through December 2, 2005, to allow entry, or withdrawal from warehouse, for consumption Chinese origin goods that (1) currently are in a bonded warehouse within the customs territory of the United States or in a foreign trade zone established under the Foreign Trade Zones Act of 1934, as amended (19 U.S.C. S 81a, *et seq.*), and (2) were entered for warehouse or sent to General Order within the customs territory of the United States, or admitted to a foreign trade zone established under the Foreign Trade Zones Act of 1934, as amended, before November 8, 2005; and (3) were, at the time of export from China, subject to a quantitative restraint for one of the categories listed below, due to the application of Paragraph 242 of the *Report of the Working Party for the Accession of China to the World Trade Organization.*

Category	Restraint period
338/339	May 23, 2005–December 31, 2005.
347/348	May 23, 2005–December 31, 2005.
352/652	May 23, 2005–December 31, 2005.
638/639	May 27, 2005–December 31, 2005.
647/648	May 27, 2005–December 31, 2005.

Shipments allowed entry pursuant to this directive will not be subject to staged entry limits. Any other shipments of goods from China subject to the quantitative restraints for the categories and restraint periods above, or to other quantitative restraints for goods exported from China prior to January 1, 2006, shall remain subject to the restraints previously established, and to staged entry procedures as laid out in the directives dated April 21, 2005, and November 4, 2005.

In carrying out the above direction, the Commissioner should construe the term ''customs territory of the United States'' to include only the States, the District of Columbia and Puerto Rico. CITA has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–23454 Filed 11–23–05; 3:23 pm]

BILLING CODE 3510–DS–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 January 27, 2006.

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: November 22, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision of a currently approved collection.

Title: Federal PLUS Loan Application and Master Promissory Note, Endorser Addendum, and School Certification.

Frequency: On Occasion.

Affected Public: Individuals or household (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 922,500.

Burden Hours: 922,500.

Abstract: The Federal PLUS Loan Application and Master Promissory Note is the means by which an eligible parent borrower applies for and agrees to repay a Federal PLUS Loan.

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 02941. 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 Joe Schubart at *Joe.Schubart@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. 05–23330 Filed 11–25–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of Correspondence from July 1, 2005 through September 30, 2005.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the U.S. Department of Education (Department) received by individuals during the previous quarter that describes the interpretations of the Department of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 245–7468.

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 a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from July 1, 2005 through September 30, 2005.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date of and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part B—Assistance for Education of all Children With Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Topic Addressed: State Administration

○ Dear Colleague letter dated July 25, 2005, advising States that the Department is invoking its transition authority under section 303 of IDEA, which terminates on December 3, 2005, to give States more time to ensure that their interagency agreements are current before the new restriction added to section 611(e)(1) of IDEA on use of Part B funds for State administration takes effect.

Section 612—State Eligibility

Topic Addressed: Evaluation

○ Letter dated September 21, 2005 to Texas Commissioner of Education Shirley Neeley, regarding steps that the Department has taken to address educational challenges for displaced students resulting from Hurricane Katrina and advising the Texas Education Agency on how to ensure timely completion of evaluations of children suspected of having a disability in districts enrolling a significant number of displaced students.

○ Letter dated August 9, 2005 to Virgin Islands Educational Consultant Eleanor Hirsh, providing an explanation regarding new requirements relating to (1) pre-referral activities and timeliness of referrals for initial evaluation to determine eligibility for special education and related services; (2) use of evaluations conducted under Part C of IDEA to determine eligibility under Part B of IDEA; and (3) placement options for preschool-aged children with disabilities.

Topic Addressed: Maintenance of State Financial Support

○ Letter dated September 21, 2005 to Louisiana Superintendent of Education Cecil J. Picard, regarding the steps the Department is taking to assist the State and school districts in educating displaced students as a result of Hurricane Katrina and informing the State the Department will waive the State-level maintenance of effort requirement as permitted under section 612(a)(18)(C) of IDEA.

Section 613—Local Educational Agency Eligibility

Topic Addressed: Charter Schools

○ Letter dated September 13, 2005 to Hawaii Department of Education Special Education Director Dr. Paul Ban, regarding the requirements of Part B of IDEA that are applicable to public charter schools under Hawaii's unitary school system.

Section 615—Procedural Safeguards

Topic Addressed: Student Discipline

○ Letter dated July 28, 2005 to Charlotte-Mecklenburg, North Carolina Commissioner Bill James, regarding requirements applicable to disciplining students with disabilities.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

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.*

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E5–6578 Filed 11–25–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Intent to Prepare a Site-Wide Environmental Impact Statement for the Y–12 National Security Complex

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of Intent (NOI).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's (CEQ) and the U.S. Department of Energy's (DOE) regulations implementing NEPA (40 CFR Parts 1500–1508 and 10 CFR Part 1021, respectively), the National Nuclear Security Administration (NNSA), an agency within the DOE, announces its intent to prepare a Site-Wide Environmental Impact Statement (SWEIS) for the Y–12 National Security Complex (Y–12) located at the junction of Bear Creek Road and Scarboro Road in Anderson County, Tennessee, near the city of Oak Ridge, Tennessee. NNSA has determined that one or more of the proposals to be evaluated would be a major federal action that could significantly affect the quality of the human environment; therefore, in accordance with the DOE regulations implementing NEPA, preparation of a new SWEIS is appropriate.

The new SWEIS will evaluate new proposals as well as update the analyses presented in the original SWEIS (DOE/EIS–0309) issued in November 2001 (66 FR 56663, November 9, 2001). In its 2002 Record of Decision (ROD) (67 FR 11296, March 13, 2002), DOE announced its decision to continue operations at Y–12 and to construct and operate two new facilities: (1) The Highly Enriched Uranium Materials Facility (HEUMF) and (2) the Special Materials Complex (SMC). The HEUMF is currently under construction. The SMC was subsequently cancelled due to changing mission requirements and replaced by a smaller facility that pertains to purification only (*Supplement Analysis for Purification Facility, Site-Wide Environmental Impact Statement for the Y–12 National Security Complex,* DOE/EIS–0309/SA–1, August 2002), and the installation of two new pieces of equipment to allow reuse of parts rather than construction of a facility to manufacture new parts. The No Action Alternative for the new SWEIS is the continued implementation of the 2002 ROD, as modified by actions analyzed in subsequent NEPA reviews. Three action alternatives are proposed for consideration in the new SWEIS in addition to the No Action Alternative. Each alternative includes the No Action Alternative as a baseline. The three alternatives differ in that one includes a new fully modernized manufacturing facility optimized for safety, security and efficiency; another consists of upgrading the existing facilities to attain the highest level of safety, security and efficiency possible without construction of new facilities; and the third consists of operating the current facilities until they are no longer viable followed by deactivation of those facilities and cessation of the associated operations.

DATES: NNSA invites comments on the scope of the SWEIS. The public scoping period starts with the publication of this NOI in the **Federal Register** and will continue through January 9, 2006. NNSA will consider all comments received or postmarked through this date in defining the scope of the SWEIS. Scoping comments received after this date will be considered to the extent practicable. NNSA will hold public scoping meetings at 475 Oak Ridge Turnpike, Oak Ridge, Tennessee, in the U.S. Department of Energy Information Center on December 15, 2005, from 11 a.m. to 2 p.m. and 6 p.m. to 9 p.m. The public scoping meetings will provide the public with an opportunity to present comments, ask questions, and discuss issues with NNSA officials regarding the SWEIS. The NNSA has invited the Tennessee Department of Environment and Conservation to participate as a cooperating agency in the preparation of the SWEIS. By this

Notice of Intent, the NNSA requests all other federal, state, local and tribal agencies to express their interest in being designated as a cooperating agency in the preparation of the SWEIS.

ADDRESSES: For information concerning the SWEIS, please contact Ms. Pam Gorman, Y–12 SWEIS Document Manager, at (865) 576–9903 or e-mail at *gormanpl@yso.doe.gov*. Written comments on the scope of the SWEIS or requests to be placed on the document distribution list can be sent to the Y–12 SWEIS Document Manager, 800 Oak Ridge Turnpike, Suite A–500, Oak Ridge, TN 37830; by facsimile to (865) 482–6052; or by e-mail to *comments@y-12sweis.com*.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA process, please contact: Ms. 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 1–800–472–2756. Additional information regarding DOE NEPA activities and access to many NEPA documents, including the 2001 SWEIS, are available on the Internet through the NEPA Web site at *http://www.eh.doe.gov/nepa*.

SUPPLEMENTARY INFORMATION:

Background. Y–12 is located on the Oak Ridge Reservation (ORR), approximately 25 miles west of Knoxville, Tennessee. For purposes of the SWEIS, the Y–12 Site is defined as approximately 5,400 acres of the 33,749-acre ORR, bounded by the DOE Boundary and Pine Ridge to the north, Scarboro Road to the east, Bethel Valley Road to the south, west to Mount Vernon Road, and then extending west along Bear Creek Road to Gum Branch Road and a corridor along Bear Creek Road to the intersection of Route 95. Y–12 has an annual budget of approximately $865 million and employs approximately 6,000 people.

NNSA is responsible for providing the nation with nuclear weapons components and ensuring those components remain safe and reliable. Y–12 is the NNSA's primary site for enriched uranium processing and storage, and one of the primary manufacturing facilities for maintaining the U.S. nuclear weapons stockpile. Y–12's nuclear nonproliferation programs play a critical role in securing our nation and the world and in combating the spread of weapons of mass destruction.

Non-defense activities at Y–12 include environmental monitoring and remediation activities; deactivation and decontamination activities; management of waste materials; research activities operated by the Oak Ridge National Laboratory; support of other DOE programs and federal agencies through the Work-for-Others Program; the transfer of specialized technologies to the U.S. industrial base; and, the supply of specialized materials to DOE's foreign and domestic customers.

Alternatives for the SWEIS. Three action alternatives and a No Action Alternative have been identified for analysis in the SWEIS. The list is tentative and intended to facilitate public comment on the scope of this SWEIS. The No Action Alternative is defined by the 2002 ROD baseline, as amended by subsequent NEPA reviews. Alternative 1 includes the No Action Alternative and proposes to modernize the Y–12 National Security Complex around a modern Uranium Processing Facility (UPF). Alternative 2 includes the No Action Alternative and proposes extending the life of existing facilities with only the most cost effective modernization possible without replacing the current structures. Alternative 3 consists of reducing site operations as facilities reach the point where they can no longer be safely operated without significant repairs or modernization.

No Action Alternative. The No Action Alternative includes the continued implementation of the 2002 ROD as modified by subsequent actions which have undergone separate NEPA review. The following decisions announced in the 2002 ROD, modifications to these decisions, and actions undertaken since the 2002 ROD are included in the No Action Alternative.

1. Highly Enriched Uranium Materials Facility (HEUMF). The new HEUMF (now under construction) will store all highly enriched uranium that is not being used in manufacturing activities. The HEUMF—to be completed in 2007 and start full-scale operations in 2008—will reduce the current storage footprint, improve security and lower operating costs as described in DOE/EIS–0309.

2. Special Materials Complex (SMC). This project was cancelled because it was no longer required by the reduced manufacturing needs of the smaller weapons stockpile. The project was replaced by a new purification facility and installation of two pieces of equipment within an existing facility; these actions allow reuse of existing parts. (*Final Supplement Analysis for Purification Facility, Site-Wide Environmental Impact Statement for the Y–12 National Security Complex,* DOE/EIS–0309/SA–1, August 2002). The Supplement Analysis assessed whether the potential environmental impacts of the stand-alone purification facility, a component of the SMC analyzed in the Y–12 SWEIS, would require the preparation of a Supplemental SWEIS. The determination was made that proceeding with the purification facility would either reduce or not affect the environmental impacts of the SMC identified in the Y–12 SWEIS, and therefore no additional NEPA analysis was required.

3. Infrastructure Reduction Initiative (IRI). The IRI is a series of individual projects to remove excess buildings and infrastructure, with a goal of reducing the active footprint at Y–12 by 50 percent during the next decade. As of September 27, 2005, total operational space at Y–12 has been reduced by 1,119,910 square feet and 244 buildings have been demolished or removed. Over the past five years, each demolition project was reviewed pursuant to NEPA prior to initiation and found to be covered by the Categorical Exclusion established by 10 CFR 1021 Appendix B1.23 (Demolition and Subsequent Disposal of Buildings, Equipment, and Support Structures).

4. Manufacturing Support and Public Interface facilities. These privately developed facilities are technical, administrative, and light laboratory buildings that will be built on land transferred to a private entity. The managing and operating contractor of the Y–12 Plant may lease these facilities. They were included in an Environmental Assessment (EA) and a subsequent Finding of No Significant Impact (FONSI) (*Alternate Financed Facility Modernization EA and FONSI,* DOE/EA–1510, January 2005).

5. Transportation of Highly Enriched Uranium (HEU) from foreign locations to Y–12. Subsequent to issuance of the 2002 Record of Decision (ROD) (67 FR 11296, March 13, 2002), the Y–12 site was given the additional mission of securing and storing small quantities of HEU transported from foreign locations to prevent proliferation of nuclear weapons and to minimize or eliminate the use of HEU in civilian reactors. Environmental Assessments were prepared and FONSI's issued for these actions (*Environmental Assessment for the Transportation of Highly Enriched Uranium from the Russian Federation to the Y–12 Security Complex,* DOE/EA–1471, January 2004; *and Environmental Assessment for the Transportation of Unirradiated Uranium in Research Reactor Fuel from Argentina, Belgium, Japan and the Republic of Korea to the Y–12 National Security Complex,* DOE/EA–1529, June 2005).

The No Action Alternative also includes the following other actions for which NEPA documentation is pending and expected to be completed prior to issuance of any ROD based on this SWEIS: (1) refurbishments or upgrades to Y–12 utility systems, such as those for potable water (*Environmental Assessment for the Y–12 Potable Water System Upgrade,* DOE/EA–1548; Final EA and a FONSI expected to be completed in January 2006); and (2) disposition of excess mercury in storage at Y–12 (an Environmental Assessment is currently being prepared and should be completed in early 2006).

Alternative 1. New Uranium Processing Facility (UPF). Under this alternative, NNSA would take all actions in the No Action Alternative, undertake a series of utilities modernization projects not assessed in previous NEPA documents, construct and operate a modern UPF sized to support the smaller nuclear weapon stockpile of the future, and take other actions as described below to create a modern weapon enterprise.

The UPF would be the keystone of the modernization efforts in this alternative. The UPF would consolidate all enriched uranium (EU) operations into an integrated manufacturing operation sized to satisfy all identified programmatic needs and would be sited adjacent to the HEUMF to allow the two facilities to function as one integrated operation. Extensive engineered security and safety features would combine with technical innovations such as agile machining to allow significant improvements in working conditions for production workers and security guards. Operations to be consolidated in the UPF are currently located in six facilities. After startup of UPF operations, some of these facilities would be used to consolidate non-EU operations, and others would be demolished.

Transition of EU production operations to the UPF and transition of EU storage operations into HEUMF (No Action Alternative) would create a new high-security area equal to 10 percent of the current high security protected area. The current high security protected area would revert to normal access.

Some other aspects of the site would be modernized, including upgrades to site electrical, compressed air, steam, and security systems. Nonnuclear operations and plant support functions would be consolidated into four new facilities adjacent to the new high-security area, and most of the Manhattan Project and Cold War structures on the site (excepting those with historical designations) could be demolished. The costs of nonnuclear modernization and building removal would be significantly reduced because the construction and demolition projects would not require the expensive security measures required for work within the high security protected area. Separate NEPA reviews would be conducted for each demolition project.

The new facilities, especially the UPF, would increase the safety of workers and the public by replacing many of the administrative controls in aging facilities with contemporary engineered safety features. Operating and security costs of the new facilities would be significantly less than those of the current facilities. Demolition of non-historic facilities would eliminate the safety and environmental risks of maintaining old deactivated structures.

Alternative 2. Upgrades to Existing Enriched Uranium and Other Processing Facilities. Under this alternative, NNSA would continue the No Action Alternative, undertake a series of utilities modernization projects not assessed in the previous NEPA documents, and upgrade the existing enriched uranium and nonnuclear processing facilities to contemporary environmental, safety, and security standards to the extent possible within the limitations of the existing structures and without prolonged interruptions of manufacturing operations.

Under this alternative, there would be no UPF, the high-security area would expand to include the HEUMF, and no parts of the current high-security area would revert to normal access. Existing production facilities would be modernized to the extent possible within the limitations of the existing structures and without prolonged interruptions of manufacturing operations; however, it would not be possible to attain the level of safety, security and efficiency possible in Alternative 1.

The current facilities were constructed during the Manhattan Project or in the early days of the Cold War when construction and safety standards were very different than today. Their modernization would require extensive changes to critical building sytems including electrical and fire protection systems. Ventilation systems would have to be re-engineered and replaced with modern systems. Some structures would require extensive re-enforcement to allow the seismic response required by current codes.

It would not be possible in all cases to modernize the existing structures to meet current operational, safety and security expectations. The age and configuration of some existing critical facilities preclude streamlined operations and also preclude some new safety and security features. Such facilities offer only limited opportunities to reduce operating and security costs or to enhance the safety of operations. While some improvements would be made to the existing facilties to address natural phenomena hazards such as earthquakes and tornadoes, the age of those facilities and their configuration may preclude cost-effective improvements in these critical areas to bring them up to current DOE standards.

Some other nonnuclear aspects of the site would be modernized, including upgrades to electrical, compressed air, steam, and security systems. Some nonnuclear operations and plant support functions would be consolidated into existing structures. Nonnuclear operations would be modernized through consolidation of operations into existing facilities with no new construction. Nonnuclear modernizations and demolition of unneeded Manhattan Project and Cold War facilities would be conducted within the expanded high security protected area at significantly higher costs than Alternative 1.

Alternative 3. Reduced Operations. NNSA would invest no additional funds beyond normal maintenance in the Y–12 National Security Complex. Facilities posing an unacceptable risk to workers or the public would be minimally upgraded if an inexpensive upgrade would allow operations to continue safely, or deactivated if the costs to operate safely exceeded the costs of normal maintenance. Although NNSA would maintain full operational readiness in Y–12 facilities and operations where that could be done safely with normal maintenance expenditures, operations would cease when expensive maintenance needs rendered facilities unviable. As NNSA retired unviable facilities, the operations in these facilities would cease and Y–12 would lose the ability to perform the missions located in these facilities.

NNSA would make the expenditures necessary to maintain safety and security for nuclear materials or other hazardous materials. Additionally, Y–12 would make the expenditures needed to continue dismantlement activities consistent with Presidential direction to reduce the nuclear weapons stockpile, even if those operations required significant maintenance expenditures. Demolition of excess facilities beyond that described in the No Action Alternative would be subject to a

separate NEPA review if funds became available. This alternative differs from the No Action Alternative in that the No Action Alternative assumes sufficient expenditures to sustain operational capability, while the Reduced Operations Alternative assumes deactivation of facilities when their continued safe operation requires more than normal maintenance except where noted above.

Public Scoping Process. The scoping process is an opportunity for the public to assist the NNSA in determining the issues for impact analysis. A public scoping meeting will be held as noted under **DATES**. The purpose of the scoping meeting is to provide the public with an opportunity to present oral and written comments, ask questions, and discuss concerns regarding the new SWEIS with NNSA officials. Comments and recommendations can also be communicated to NNSA as noted earlier in this notice under **ADDRESSES**. The SWEIS public meetings will use a format to facilitate dialogue between NNSA and the public. NNSA welcomes specific comments or suggestions on the content of the document.

The potential scope of the SWEIS discussed in the previous portions of this NOI is tentative and is intended to facilitate public comment on the scope of the SWEIS. The SWEIS will describe the potential environmental impacts of the alternatives by using available data where possible and obtaining additional data where necessary. Copies of written comments and transcripts of oral comments provided to NNSA during the scoping period will be available at the U.S. Department of Energy Public Reading Room at 230 Warehouse Road, Oak Ridge, TN 37830, and on the internet at *http://www.y-12sweis.com*. The 2001 SWEIS is available on the internet at *http://www.eh.doe.gov/nepa/eis/eis0309/toc.html*.

SWEIS Preparation Process. The SWEIS preparation process begins with the publication of this NOI in the **Federal Register**. After the close of the public scoping period, NNSA will begin preparing the draft SWEIS. NNSA expects to issue the draft SWEIS for public review by next summer. Public comments on the draft SWEIS will be received during a comment period of at least 45 days following the U.S. Environmental Protection Agency publication of the Notice of Availability in the **Federal Register**. Notices placed in local newspapers will specify dates and locations for at least one public hearing on the draft SWEIS, and will establish a schedule for submitting comments on the draft, including a final date for submission of comments. Issuance of the final SWEIS is scheduled for late 2006.

Classified Material. NNSA will review classified material while preparing this SWEIS. Within the limits of classification, NNSA will provide the public as much information as possible to assist its understanding and ability to comment. Any classified material needed to explain the purpose and need for the action, or the analyses in this SWEIS, will be segregated into a classified appendix or supplement, which will not be available for public review. However, all unclassified information or results of calculations using classified data will be reported in the unclassified section of the SWEIS, to the extent possible in accordance with Federal classification requirements.

Issued in Washington, DC, this 18th day of November, 2005.

Linton F. Brooks,

Administrator, National Nuclear Security Administration.

[FR Doc. 05–23369 Filed 11–25–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

[Rate Order No. WAPA–125]

Loveland Area Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of order concerning power rates.

SUMMARY: The Deputy Secretary of Energy confirmed and approved Rate Order No. WAPA–125 and Rate Schedule L–F6, placing firm electric service rates from the Loveland Area Projects (LAP) of the Western Area Power Administration (Western) into effect on an interim basis. The provisional rates will be in effect until the Federal Energy Regulatory Commission (Commission) confirms, approves, and places them into effect on a final basis or until they are replaced by other rates. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expenses, and repay power investment and irrigation aid, within the allowable periods.

DATES: Rate Schedule L–F6 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after January 1, 2006, and will be in effect until the Commission confirms, approves, and places the provisional rates into effect on a final basis ending December 31, 2010, or until the rate schedule is superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Joel K. Bladow, Regional Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, Colorado, 80538–8986, (970) 461–7201, or Mr. Daniel T. Payton, Rates Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, Colorado, 80538–8986, telephone (970) 461–7442, e-mail *dpayton@wapa.gov*.

SUPPLEMENTARY INFORMATION: The Deputy Secretary of Energy approved existing Rate Schedule L–F5 for LAP firm electric service on an interim basis on December 24, 2003 (Rate Order No. WAPA–105, 69 FR 644, January 6, 2004). The Commission confirmed and approved the rate schedule on a final basis on December 21, 2004, in FERC Docket No. EF04–5181–000 (109 FERC 62,228). The existing rate schedule is effective from February 1, 2004, through December 31, 2008.

Existing firm electric service Rate Schedule L–F5 is being superseded by Rate Schedule L–F6. Under Rate Schedule L–F5, the energy charge is 11.95 mills per kilowatthour (mills/kWh) and the capacity charge is $3.14 per kilowattmonth (kWmonth). The composite rate is 23.90 mills/kWh. The provisional rates for LAP firm electric service under Rate Schedule L–F6 are being implemented in two steps. The first step of the provisional rates for LAP firm electric service consists of an energy charge of 13.06 mills/kWh and a capacity charge of $3.43 per kWmonth, producing an overall composite rate of 26.12 mills/kWh on January 1, 2006. This represents a 9.3 percent increase when compared with the existing LAP firm electric service rate under Rate Schedule L–F5. The second step of the provisional rates for LAP firm electric service consists of an energy charge of 13.68 mills/kWh and a capacity charge of $3.59 per kWmonth, producing an overall composite rate of 27.36 mills/kWh on January 1, 2007. This represents an additional 5.2 percent increase.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the

Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Under Delegation Order Nos. 00–037.00 and 00–001.00A, 10 CFR part 903, and 18 CFR part 300, I hereby confirm, approve, and place Rate Order No. WAPA–125 and the proposed LAP firm electric service rates into effect on an interim basis. The new Rate Schedule L–F6 will be promptly submitted to the Commission for confirmation and approval on a final basis.

Dated: November 9, 2005.

Clay Sell,

Deputy Secretary.

Order Confirming, Approving, and Placing the Loveland Area Projects Firm Electric Service Rates Into Effect on an Interim Basis

These rates were established in accordance with section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Acronyms and Definitions

As used in this Rate Order, the following acronyms and definitions apply:

Administrator: The Administrator of Western Area Power Administration.

Capacity: The electric capability of a generator, transformer, transmission circuit, or other equipment. It is expressed in kW.

Capacity Charge: The rate which sets forth the charges for capacity. It is expressed in dollars per kWmonth.

Commission: Federal Energy Regulatory Commission.

Composite Rate: The rate for commercial firm power and is the total annual revenue requirement for capacity and energy divided by the total annual firm energy sales under contract. It is expressed in mills/kWh and used for comparison purposes.

Criteria: The Post-1989 General Power Marketing and Allocation Criteria for the sale of energy with capacity from the Pick-Sloan Missouri Basin Program—Western Division and the Fryingpan-Arkansas Project.

Customer: An entity with a contract for and receiving firm electric service from Western's Rocky Mountain Region.

Deficits: Deferred or unrecovered annual expenses.

DOE Order RA 6120.2: An order outlining power marketing administration financial reporting and rate-making procedures.

Energy: Measured in terms of the work it is capable of doing over a period of time. It is expressed in kWh.

Energy Charge: The rate which sets forth the charges for energy. It is expressed in mills per kWh and applied to each kWh delivered to each customer.

FERC: The Commission (to be used when referencing Commission Orders).

Firm: A type of product and/or service that is available at the time requested by the customer.

FRN: **Federal Register** notice.

Fry-Ark: Fryingpan-Arkansas Project.

FY: Fiscal year; October 1 to September 30. kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.

kWmonth: Kilowattmonth—the electrical unit of the monthly amount of capacity.

kWh: Kilowatthour—the electrical unit of energy that equals 1,000 watts in 1 hour.

kilowattyear: Kilowattyear—the electrical unit of the yearly amount of capacity.

LAP: Loveland Area Projects.

L–F5: Loveland Area Projects existing firm electric service rate schedule (expires December 31, 2008, or until superseded).

L–F6: Loveland Area Projects provisional firm electric service rate schedule (effective January 1, 2006).

M&I: Municipal and industrial water development.

mills/kWh: Mills per kilowatthour—the unit of charge for energy (equals one tenth of a cent or one thousandth of a dollar).

MOU: Memorandum of Understanding for the Pick-Sloan Missouri Basin Program and the Fry-Ark Project. Signatories include Western, Reclamation, U.S. Army Corps of Engineers, Mid-West Electric Consumers Association, Loveland Area Customers Association, and Western States Power Corporation.

NEPA: National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

O&M: Operation and Maintenance.

P–SMBP: The Pick-Sloan Missouri Basin Program.

P–SMBP—WD: Pick-Sloan Missouri Basin Program—Western Division.

Power: Capacity and energy.

Preference: The requirements of Reclamation Law which provide that preference in the sale of Federal power shall be given to municipalities and other public corporations or agencies and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made under the Rural Electrification Act of 1936 (Reclamation Project Act of 1939, section 9(c), 43 U.S.C. 485h(c)).

Provisional Rates: Rates which have been confirmed, approved, and placed into effect on an interim basis by the Deputy Secretary.

PRS: Power Repayment Study.

Rate Brochure: A document prepared for public distribution explaining the rationale and background of the rate proposal contained in this rate order and dated June 2005.

Ratesetting PRS: The PRS used for the rate adjustment proposal.

Reclamation: United States Department of the Interior, Bureau of Reclamation.

Reclamation Law: A series of Federal laws. Viewed as a whole, these laws create the originating framework in which Western markets power.

Revenue Requirement: The revenue required to recover annual expenses (such as O&M, purchase power, transmission service expenses, interest expenses, and deferred expenses) and repay Federal investments, and other assigned costs.

Rocky Mountain Region: The Rocky Mountain Customer Service Region of Western.

Western: United States Department of Energy, Western Area Power Administration.

Effective Date

The new provisional rates will take effect on the first day of the first full billing period beginning on or after January 1, 2006, and will be in effect until December 31, 2010, pending approval by the Commission on a final basis.

Public Notice and Comment

Western followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, in developing these rates. The steps Western took to involve interested parties in the rate process were:

1. The proposed rate adjustment was initiated on April 22, 2005, when Western's Rocky Mountain Region mailed a notice announcing an informal customer meeting to discuss the proposed firm electric service rate adjustment to all LAP preference customers and interested parties. The informal meeting was held on May 11, 2005, in Denver, Colorado. At this informal meeting, Western explained the rationale for the rate adjustment, presented rate designs and methodologies, and answered questions.

2. An FRN was published on June 16, 2005 (70 FR 35079), officially announcing proposed LAP rates, initiating the public consultation and comment period, and announcing the public information and public comment forums.

3. On July 1, 2005, Western's Rocky Mountain Region mailed letters to all LAP preference customers and interested parties transmitting a copy of the FRN published on June 16, 2005 (70 FR 35079).

4. The public information forums were held on July 19, 2005, beginning at 10 a.m. MDT, in Denver, Colorado, and again on July 20, 2005, beginning at 8 a.m. CDT, in Lincoln, Nebraska. Western provided detailed explanations of the proposed LAP rates, provided a list of issues that could change the proposed rates, and answered questions. A rate brochure detailing the proposed rates was provided at the forums.

5. The public comment forum was held on August 16, 2005, beginning at 9 a.m. MDT, in Denver, Colorado. Western gave the public an opportunity to comment for the record. No oral comments were made and no written comments were received during the comment forum.

6. Western received four comment letters during the consultation and comment period, which ended September 14, 2005. All formally submitted comments have been considered in preparing this Rate Order.

7. Western's Rocky Mountain Region provided a Web site with all of the letters, time frames, dates and locations of forums, documents discussed at the information meetings, FRNs, and all other information about this rate process for customer access. The Web site is located at *http://www.wapa.gov/rm/Rates/firm_power_rate_adj_2006.htm.*

Comments

Written comments were received from the following organizations: East River Electric Power Cooperative, Mid-West Electric Consumers Association, Municipal Energy Agency of Nebraska, Valley Electric Cooperative, Inc.

Project Descriptions

Loveland Area Projects

The Post-1989 General Power Marketing and Allocation Criteria, published in the **Federal Register** on January 31, 1986 (51 FR 4012), integrated the resources of the P–SMBP—WD and Fry-Ark. This operational and contractual integration, known as LAP, allowed an increase in marketable resource, simplified contract administration, and established a blended rate for LAP power sales.

However, the P–SMBP—WD and Fry-Ark retain separate financial status. For this reason, separate PRSs are prepared annually for each project. These PRSs are used to determine the sufficiency of the power rate to generate adequate revenue to repay project investment and costs during each project's prescribed repayment period. The revenue requirement of the Fry-Ark PRS is combined with the P–SMBP—WD revenue requirement derived from the P—SMBP PRS, to develop one rate for LAP firm electric sales.

Pick-Sloan Missouri Basin Program—Western Division

The initial stages of the Missouri River Basin Project were authorized by Congress in section 9 of the Flood Control Act of December 22, 1944, commonly referred to as the 1944 Flood Control Act (Pub. L. 78–534, 58 Stat. 877, 891). The Missouri River Basin Project, later renamed the Pick-Sloan Missouri Basin Program to honor its two principal authors, has been under construction since 1944. The P–SMBP encompasses a comprehensive program of flood control, navigation improvement, irrigation, M&I water development, and hydroelectric production for the entire Missouri River Basin. Multipurpose projects have been developed on the Missouri River and its tributaries in Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming.

The Colorado-Big Thompson, Kendrick, Riverton, and Shoshone projects were administratively combined with P–SMBP in 1954, followed by the North Platte Project in 1959. These projects are known as the ''Integrated Projects'' of the P–SMBP. The Riverton Project was reauthorized as a unit of the P–SMBP in 1970.

The P–SMBP—WD and the Integrated Projects include 19 powerplants. There are six powerplants in the P–SMBP—WD: Glendo, Kortes, and Fremont Canyon powerplants on the North Platte River; Boysen and Pilot Butte on the Wind River; and Yellowtail powerplant on the Big Horn River.

In the Colorado-Big Thompson Project, there are also six powerplants. Green Mountain powerplant on the Blue River is on the West Slope of the Rocky Mountains. Marys Lake, Estes, Pole Hill, Flatiron, and Big Thompson powerplants are on the East Slope.

The Kendrick Project has two power production facilities: Alcova and Seminoe powerplants. Power production facilities in the Shoshone Project are Shoshone, Buffalo Bill, Heart Mountain, and Spirit Mountain powerplants. The only production facility in the North Platte Project is the Guernsey powerplant.

Fryingpan-Arkansas Project

The Fry-Ark is a transmountain diversion development in southeastern Colorado authorized by the Act of Congress on August 16, 1962 (Pub. L. 87–590, 76 Stat. 389, as amended by Title XI of the Act of Congress on October 27, 1974 (Pub. L. 93–493, 88 Stat. 1486, 1497)). The Fry-Ark diverts water from the Fryingpan River and other tributaries of the Roaring Fork River in the Colorado River Basin on the West Slope of the Rocky Mountains to the Arkansas River on the East Slope. The water diverted from the West Slope, together with regulated Arkansas River water, provides supplemental irrigation, M&I water supplies, and produces hydroelectric power. Flood control, fish and wildlife enhancement, and recreation are other important purposes of Fry-Ark. The only generating facility in Fry-Ark is the Mt. Elbert Pumped-Storage Powerplant on the East Slope.

Power Repayment Studies

Western prepares a PRS each FY to determine if revenues will be sufficient to repay, within the required time, all costs assigned to the LAP revenues. Repayment criteria are based on law, policies including DOE Order RA 6120.2, and authorizing legislation. To meet Cost Recovery Criteria outlined in DOE Order RA 6120.2, a revised study and rate adjustment has been developed to demonstrate that sufficient revenues will be collected to meet future obligations.

In the P–SMBP PRS, payments toward irrigation assistance and capital debt are necessary before deficits are completely repaid. Traditionally, prepayment of irrigation assistance or capital is only

done in the absence of deficits. However, if all revenue were applied toward deficits prior to making any prepayments for irrigation and other capital requirements, an extraordinarily large rate increase to meet single-year repayment obligations would be required. Once these single-year repayment obligations were satisfied, another rate adjustment would be necessary to decrease the rates. While repayment of capital debt and irrigation assistance prior to complete repayment of deficits is not typical, the approach approved within this Rate Order is well within the bounds of DOE Order RA 6120.2. Western will repay all deficits and also make previously planned payments for irrigation assistance and other investments that are due in the years 2013 and 2014. Prepaying irrigation and capital investments has been part of P–SMBP repayment plans and approved rate adjustments for the past 20 years. It is an integral part of the long-term plan for the project and has provided rate stability for consumers while meeting Federal repayment obligations. Modest irrigation and investment payments for a brief period of 2 to 3 years will reduce the single-year revenue requirement for irrigation assistance and hold increases to the ''lowest possible rates to consumers consistent with sound business principles,'' as outlined in section 5 of the Flood Control Act of 1944.

The provisional rates for LAP will be implemented in two steps. First step rates are to become effective on an interim basis on the first day of the first full billing period beginning on or after January 1, 2006. Second step rates are to become effective on the first day of the first full billing period beginning on or after January 1, 2007. Under Rate Schedule L–F6, the first and second step provisional rates for LAP firm electric service will result in a total composite rate increase of approximately 14.5 percent. The current composite rate under Rate Schedule L–F5 is 23.90 mills/kWh. The provisional composite rate is 27.36 mills/kWh.

Existing and Provisional Rates

A comparison of the existing and provisional rates for LAP firm electric service follows:

COMPARISON OF EXISTING AND PROVISIONAL RATES LAP FIRM ELECTRIC SERVICE

Firm electric service	Existing rates	First step provisional rates and percent change, effective Jan. 1, 2006	Second step provisional rates and percent change, effective Jan. 1, 2007
Rate Schedule	L–F5	L–F6	L–F6
Composite Rate (mills/kWh)	23.90	26.12 (9.3%)	27.36 (5.2%)
Firm Capacity ($/kWmonth)	$3.14	$3.43 (9.2%)	$3.59 (5.1%)
Firm Energy (mills/kWh)	11.95	13.06 (9.3%)	13.68 (5.2%)

Certification of Rates

Western's Administrator certified that the provisional rates for LAP firm electric service under Rate Schedule L–F6 are the lowest possible rates consistent with sound business principles. The provisional rates were developed following administrative policies and applicable laws.

LAP Firm Electric Service Discussion

According to Reclamation Law, Western must establish power rates sufficient to recover operation, maintenance, and purchase power expenses, and repay power investment and irrigation aid.

The Criteria, published in the **Federal Register** on January 31, 1986 (51 FR 4012), operationally and contractually integrated the resources of the P–SMBP—WD and Fry-Ark (thereafter referred to as LAP). A blended rate was established for the sale of LAP power. The P–SMBP—WD portion of the revenue requirements for the LAP firm electric service rates was developed from the revenue requirement calculated in the P–SMBP Ratesetting PRS. The P–SMBP—WD revenue requirement increased approximately 17 percent due to increased purchase power costs due to extended drought as well as costs associated with increased O&M expenses. The adjustment to the P–SMBP revenue requirement is a separate formal rate process which is documented in Rate Order No. WAPA–126. Rate Order No. WAPA–126 is also scheduled to go into effect on the first day of the first full billing period beginning on or after January 1, 2006. The revenue requirements for P–SMBP—WD are as follows:

SUMMARY OF P–SMBP—WD REVENUE REQUIREMENTS ($000)

Present Revenue Requirement (18.06 mills/kWh × 1,988,000,000 kWh)	$35,903
Provisional Increases	
Provisional First Step Increase (Jan 06) (1.96 mills/kWh × 1,988,000,000 kWh)	3,896
Provisional Second Step Increase (Jan 07) (1.07 mills/kWh × 1,988,000,000 kWh)	2,127
Total Increase (3.03 mills/kWh × 1,988,000,000 kWh)	6,024
Provisional Revenue Requirement (18.06 + 3.03 = 21.09 mills/kWh × 1,988,000,000 kWh)	41,927

The Fry-Ark piece of the revenue requirements for the LAP firm electric service rates was developed from the revenue requirement calculated in the Fry-Ark Ratesetting PRS, which has been updated to reflect the most current

information. The Fry-Ark revenue requirement contains two components. The project has an average annual energy generation of 52 gigawatthours from flow-through water. The remaining revenue requirement is derived from the firm capacity component. This is the procedure used in the study to account for the Fry-Ark portion of the energy marketed by LAP. The Fry-Ark revenue requirement increased approximately 8 percent also due to increased O&M expenses and higher costs associated with increased purchase power costs due to extended drought.

SUMMARY OF FRY-ARK REVENUE REQUIREMENTS ($000)

Present Revenue Requirement	$12,855
Provisional Increases	
Provisional First Step Increase (Jan 06)	650
Provisional Second Step Increase (Jan 07)	396
Total Increase	1,046
Provisional Revenue Requirement	13,901

This table compares the LAP existing revenue requirements to the proposed revenue requirements:

SUMMARY OF LAP REVENUE REQUIREMENTS ($000)

	Existing	First step (January 2006)	Second step (January 2007)
P–SMBP—WD	$35,903	$39,800	$41,927
Fry-Ark	12,855	13,505	13,901
Total LAP	48,758	53,305	55,828

Statement of Revenue and Related Expenses

The following table provides a summary of projected revenue and expense data for the Fry-Ark firm electric service revenue requirement through the 5-year provisional rate approval period:

FRY-ARK COMPARISON OF 5-YEAR RATE APPROVAL PERIOD (FY 2006–2010) TOTAL REVENUE AND EXPENSE ($000)

	Existing rate	Proposed rate	Difference
Total Revenues	$71,850	$76,724	$4,747
Revenue Distribution:			
Expenses:			
O&M	22,095	22,601	506
Purchase Power and Transmission	21,743	23,399	1,656
Interest [1]	23,939	23,881	−58
Total Expenses	67,777	69,881	2,104
Principal Payments:			
Capitalized Expenses	0	374	374
Original Project and Additions	3,133	940	−2,193
Replacements	940	5,529	4,589
Total Principal Payments	4,073	6,843	2,770
Total Revenue Distribution	71,850	76,724	4,874

[1] Interest expenses decreased due to a lower interest rate being used for future replacements and additions in the Ratesetting PRS.

The summary of P–SMBP—WD revenues and expenses for the 5-year provisional rate approval period is included in the P–SMBP Statement of Revenue and Related Expenses that is part of Rate Order No. WAPA–126.

Basis for Rate Development

The P–SMBP PRS calculates the composite rate in mills/kWh for future firm power (capacity and energy) sales. In the Fry-Ark PRS, the study calculates the capacity charge in dollars per kilowattyear. The charge is adjusted until sufficient revenues are generated to meet the cost-recovery requirement.

The proposed LAP firm electric service rate is designed to recover 50 percent of the revenue requirement from the capacity charge and 50 percent from the energy charge. The capacity charge is calculated by dividing 50 percent of

the total annual revenue requirement by the number of billing units (kWmonth) in a year. The energy charge is calculated by dividing 50 percent of the total annual revenue requirement by the annual energy sales under contract.

The existing rates for LAP firm electric service in Rate Schedule L–F5, which expire on December 31, 2008, no longer provide sufficient revenues to pay all annual costs, including interest expense, and repay power investment and irrigation aid within the allowable period. The adjusted rates reflect increases primarily in purchase power costs, O&M costs, and interest expenses. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repay power investment and irrigation aid within the allowable periods. The provisional rates will take effect on January 1, 2006, and will remain in effect through December 31, 2010.

Comments

The comments and responses applicable to the LAP firm electric service rates, paraphrased for brevity when not affecting the meaning of the statement(s), are discussed below. Comments that apply to P–SMBP only are being answered in Rate Order No. WAPA–126.

A. *Comment:* Customers support implementing the two-step rate adjustment on a calendar year basis.

Response: The two-step rate adjustment proposal meets all repayment requirements according to DOE Order RA 6120.2, and since the majority of the customers support the calendar year implementation, Western will implement the first step of the two-step rate adjustment on January 1, 2006, and the second step of the two-step rate adjustment on January 1, 2007.

B. *Comment:* One commenter noted that working with Western through the MOU work group has been beneficial during this process. The MOU group has identified an issue regarding personnel costs of the federal agencies that merits further attention. The commenter recognized that this issue could not be resolved during consideration of the rate increase, but the commenter encouraged Western to move forward with its investigation into this issue.

Response: Western, through the MOU process, has agreed to look into this issue.

C. *Comment:* Customers noted their concern regarding the rate of increase in Reclamation's O&M costs.

Response: Western is actively participating with the customers through the MOU group, in which Reclamation also participates, to better understand what is driving Reclamation's increases.

D. *Comment:* One commenter noted that ongoing drought should be viewed as a good opportunity to review cutting discretionary costs where possible and look at the rate structure for some of Western's less widely used products to determine if they are appropriate and if they could be modified to more accurately reflect cost of service principles.

Response: As mentioned above, Western is actively participating with the customers through the MOU group to identify and address such issues.

E. *Comment:* One commenter encouraged Western to continue investigating ways to maximize the value of its assets, including transmission rights across neighboring systems and high-value transmission across constrained paths.

Response: Western continually looks for ways to increase revenues and decrease costs, including maximizing the use of the transmission system. However, Western has determined that this particular comment is not directly related to the proposed action and is outside the scope of the rate process.

Availability of Information

Information about this rate adjustment, including PRSs, comments, letters, memorandums, and other supporting material made or kept by Western that was used to develop the provisional rates is available for public review in the Rocky Mountain Customer Service Regional Office, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, Colorado.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Submission to the Federal Energy Regulatory Commission

The provisional rates herein confirmed, approved, and placed into effect, together with supporting documents, will be submitted to the Commission for confirmation and final approval.

Order

In view of the foregoing and under the authority delegated to me, I confirm and approve on an interim basis, effective January 1, 2006, Rate Schedule L–F6 for the Loveland Area Projects of the Western Area Power Administration. The rate schedule shall remain in effect on an interim basis, pending the Commission's confirmation and approval of them or substitute rates on a final basis through December 31, 2010.

Dated: November 9, 2005.

Clay Sell,

Deputy Secretary.

Rate Schedule L–F6 (Supersedes Schedule L–F5)

Loveland Area Projects; Colorado, Kansas, Nebraska, Wyoming

Schedule of Rates for Firm Electric Service

Effective

First Step: Beginning on the first day of the first full billing period on or after January 1, 2006, through December 31, 2006.

Second Step: Beginning on the first day of the first full billing period on or after January 1, 2007, through December 31, 2010.

Available

Within the marketing area served by the Loveland Area Projects.

Applicable

To the wholesale power customers for firm power service supplied through one meter at one point of delivery, or as otherwise established by contract.

Character

Alternating current, 60 hertz, three phase, delivered and metered at the voltages and points established by contract.

Monthly Rates

First Step:

Demand Charge: $3.43 per kilowatt (kW) of billing demand.

Energy Charge: 13.06 mills per kilowatthour (kWh) of use.

Billing Demand: Unless otherwise specified by contract, the billing demand will be the seasonal contract rate of delivery.

Second Step:

Demand Charge: $3.59 per kW of billing demand.

Energy Charge: 13.68 mills per kWh of use.

Billing Demand: Unless otherwise specified by contract, the billing demand will be the seasonal contract rate of delivery.

Adjustments

For Transformer Losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For Power Factor: None. The customer will be required to maintain a power factor at all points of measurement between 95-percent lagging and 95-percent leading.

[FR Doc. E5–6575 Filed 11–25–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Parker-Davis Project, Pacific Northwest-Pacific Southwest Intertie Project, and the Central Arizona Project—Rate Order No. WAPA–114

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of withdrawal of multi-system transmission rate proposal.

SUMMARY: The Western Area Power Administration (Western) initiated a formal rate process for the purpose of implementing a multi-system transmission rate (MSTR) by a **Federal Register** notice published on June 22, 2004. The process was extended by a **Federal Register** notice on March 3, 2005. The purpose of the extension was to allow Western time to respond to customer requests to develop a customer choice model. Western developed and presented a customer choice methodology in public information and public comment forums held March 29, 2005, and April 6, 2005, respectively. Effective November 28, 2005, Western is withdrawing the MSTR proposal for long-term firm transmission service on the Parker-Davis Project (P–DP), the Pacific Northwest-Pacific Southwest Intertie Project (Intertie), and the Central Arizona Project (CAP). Western has considered all comments in its decision to withdraw its proposal for the MSTR for long-term firm transmission service. Western is, however, studying the conversion of non-firm and short-term firm transmission service on the Parker-Davis, Intertie and Central Arizona projects to a multi-system service. Customer notification will be provided and feedback sought in a separate informal process.

FOR FURTHER INFORMATION CONTACT: Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 605–2453, e-mail *carlson@wapa.gov,* or Mr. Jack Murray, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 605–2442, e-mail *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: During the consultation and comment period for the rate process, Western received comments voicing strong opposition to the proposed methodology. No comments were received in support of the customer choice methodology.

The consultation and comment period ended June 1, 2005. All formally submitted comments, both written and oral, were considered in preparing this notice.

Comments

Written comments were received from the following organizations: Arizona Power Authority, Arizona Public Service Company, K. R. Saline & Associates, Robert S. Lynch and Associates, Salt River Project.

Representatives of the following organizations made oral comments: Irrigation & Electrical Districts Association of Arizona, R. W. Beck, Salt River Project.

Western responded to an oral comment received during the Public Information Forum in a letter dated May 17, 2005. The letter is posted on Western's Web site at *http://www.wapa.gov/dsw/pwrmkt/MSTRP/MSTRP.htm.* Responses in this notice focus on written comments received during the consultation and comment period pertinent to a revised customer choice model and Western's authority to develop an MSTR.

Comment: Western received a comment suggesting it has no legal authority to implement an MSTR of any sort if the revenue requirements of multiple projects will be combined. Comments also questioned whether an MSTR is allowed by DOE Order RA6120.2.

Response: Under all MSTR approaches presented by Western, each power system would remain financially independent for accounting and repayment purposes. Each power system would maintain a separate Power Repayment Study (PRS) and financial reports. The total MSTR revenue collected would be allocated to each power system based on the individual power system's percentage of the total MSTR revenue requirement.

Western is not prohibited from implementing such a blended rate by either DOE Order RA 6120.2 or project-specific legislation. Western has combined the revenue requirements of multiple projects for ratesetting purposes in its other regional offices and continues to set rates in this manner.

Comment: A commenter who had asked Western to provide general information on the MSTR more than one year ago believes Western has not provided this information.

Response: The specific request had to do with Western's initial presentation of a customer choice methodology. The presentation consisted mainly of tables and mathematical formulas to explain the circular problem with the method. At the commenter's request an explanation in words was posted on the Web site in June, 2003 under the heading ''Informal Customer Meeting May 23, 2003'' linked with the phrase ''Customer Choice Discussion.''

Comment: A customer commented that the ''customer choice'' model is an attempt to lower rates for a small group of ''pancaked'' customers at the expense of the majority of Western's firm transmission customers.

Response: Western undertook the design of the proposed ''customer choice model'' to address several customers' comments received during the initial MSTR consultation and

comment period. One of the earliest principles stated by Western in the initial MSTR development was to eliminate the pancaking of firm transmission rates. It was known that any elimination of pancaking of rates will result in a revenue loss to a single power system by virtue of the pancaked customer no longer having to pay two systems' rates for the same reservation. Western's customer choice model took this into account and chose a rate which would begin to eliminate pancaking while balancing the risk to the other power systems. Western projected additional other revenues would be realized in sufficient amounts to make up for any losses resulting from MSTR implementation.

Comment: A comment suggested Western re-open the public process to develop a customer choice model that would be supported by a majority of customers.

Response: Over a 2-year period, Western has explored numerous options for a multi-system transmission rate. Four options were customer choice models using various approaches. In all cases, for Western to be able to collect the full revenue requirement, some customers will incur increased costs as a result of a firm MSTR implementation. In other customer choice models explored by Western, varying levels of support were noted. However in no case did a majority of customers support the methodologies. Support was dependent upon the timing and the extent of potential cost increases.

Comment: A comment requested Western calculate the magnitude of rate decreases if revenue projections materialize without implementation of an MSTR.

Response: During the public process for the customer choice MSTR, Western presented a table showing some loss of firm revenues to the single system projects due to partial un-pancaking. Western projected mitigating this loss of revenues in order to provide for stable single system rates. Western's commitment to its customers is to keep rates as stable as possible for the foreseeable future. It is not appropriate to project a rate decrease given the many variables which may impact the rate calculation.

Comment: A comment suggested that if the MSTR is implemented, the return of funds to each single system should be based on the amount of transmission revenue lost due to MSTR implementation instead of based on the percentage share of total revenue requirement, as proposed by Western.

Response: The method the comment suggested is the methodology Western proposed in the initial MSTR presentation which would have had all customers converging to an MSTR in the fifth year.

This methodology resulted in a risk of increased costs to some customers. The comments received at that time correctly noted that any MSTR method that eliminates pancaking presents a risk of cost increases. However, MSTR could help mitigate this risk by freeing up additional capacity for sale.

Comment: Several comments suggested that Western abandon this proposal because the risks outweigh the benefits.

Response: After careful consideration of all comments, Western is withdrawing the proposal for a firm point-to-point MSTR rate at this time.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that Western initiates or uses to develop the proposed rates are available for inspection and copying at the Desert Southwest Customer Service Regional Office, Western Area Power Administration, located at 615 South 43rd Avenue, Phoenix, Arizona. Many of these documents and supporting information are also available on Western's Web site at *http://www.wapa.gov/dsw/pwrmkt/MSTRP/MSTRP.htm.*

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. This action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: November 9, 2005.

Michael S. Hacskaylo,

Administrator.

[FR Doc. E5–6572 Filed 11–25–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division—Rate Order No. WAPA–126

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of order concerning power rates.

SUMMARY: The Deputy Secretary of Energy confirmed and approved Rate Order No. WAPA–126 and Rate Schedules P–SED–F8 and P–SED–FP8, placing firm power and firm peaking power rates from the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP—ED) of the Western Area Power Administration (Western) into effect on an interim basis. The provisional rates will be in effect until the Federal Energy Regulatory Commission (Commission) confirms, approves, and places them into effect on a final basis or until they are replaced by other rates. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repay power investment and irrigation aid, within the allowable periods.

DATES: Rate Schedules P–SED–F8 and P–SED–FP8 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after January 1, 2006, and will be in effect until the Commission confirms, approves, and places the rate schedules in effect on a final basis ending December 31, 2010, or until the rate schedules are superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Harris, Regional Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–

1266, telephone (406) 247–7405, e-mail *rharris@wapa.gov*, or Mr. Jon R. Horst, Rates Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, telephone (406) 247–7444, e-mail *horst@wapa.gov*.

SUPPLEMENTARY INFORMATION: The Deputy Secretary of Energy approved existing Rate Schedules P–SED–F7 and P–SED–FP7 for P–SMBP—ED firm power service and firm peaking power service on December 24, 2003 (Rate Order No. WAPA–110, 69 FR 649, January 6, 2004). The Commission confirmed and approved the rate schedules on December 23, 2004, in FERC Docket No. EF04–5031–000 (109 FERC 62,234). The existing rate schedules are effective from February 1, 2004, through December 31, 2008.

The P–SMBP—ED firm power and firm peaking power rates must be increased due to the economic impact of the drought, increased operation and maintenance and other annual expenses, increased investments, and increased interest expense associated with deficits. The studies have also been adjusted to account for calendar year implementation versus a fiscal year implementation.

The existing firm power Rate Schedule is being superseded by Rate Schedule P–SED–F8. Under Rate Schedule P–SED–F7, the energy charge is 9.62 mills per kilowatthour (mills/kWh), and the capacity charge is $3.72 per kilowattmonth (kWmonth). The composite rate is 16.51 mills/kWh. The provisional rates for P–SMBP—ED firm power are being implemented in two steps. The first step of the provisional firm power rates consists of an energy charge of 10.69 mills/kWh and a capacity charge of $4.20 per kWmonth. The first step of the provisional rates for P–SMBP—ED firm power in Rate Schedule P–SED–F8 will result in an overall composite rate of 18.47 mills/kWh on January 1, 2006, and will result in an increase of about 11.9 percent when compared with the existing P–SMBP—ED firm power rates under Rate Schedule P–SED–F7. The second step of the provisional firm power rates consists of an energy charge of 11.29 mills/kWh and a capacity charge of $4.45 per kWmonth. The second step of the provisional rates for P–SMBP—ED firm power in Rate Schedule P–SED–F8 will result in an overall composite rate of 19.54 mills/kWh on January 1, 2007, and will result in an increase of about 5.8 percent, with a total compounded increase after both steps of about 18.4 percent.

The existing firm peaking power Rate Schedule is being superseded by Rate Schedule P–SED–FP8. Under Rate Schedule P–SED–FP7, the firm peaking energy charge is 9.62 mills/kWh, and the firm peaking capacity charge is $3.72 per kWmonth. The first step of the provisional rates consists of an energy charge of 10.69 mills/kWh and a capacity charge of $4.20 per kWmonth on January 1, 2006. The second step of the provisional rates consists of an energy charge of 11.29 mills/kWh and a capacity charge of $4.45 per kWmonth on January 1, 2007.

The new rates will be higher than the existing rates, primarily due to increased purchased power and deferred annual expenses (deficits) associated with extended drought conditions. The proposed increase is more than 18 percent, which, combined with the recent rate increase in 2004, will result in a total increase in excess of 37 percent by 2007.

Incorporating these costs in the current Power Repayment Study confirms that existing rates do not provide enough revenue to repay irrigation assistance for Bureau of Reclamation Projects in future years. To meet Cost Recovery Criteria outlined in DOE Order RA 6120.2, a revised study and rate adjustment has been developed to demonstrate that sufficient revenues will be collected to meet future obligations.

The proposed rates will provide sufficient revenue to pay all annual costs, including interest expense, and meet required investment repayment within the allowable periods outlined in DOE Order RA 6120.2 and applicable legislation. Implementing the increase in two steps helps mitigate the financial impact of a single larger rate adjustment.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Under Delegation Order Nos. 00–037.00 and 00–001.00A, 10 CFR part 903, and 18 CFR part 300, I hereby confirm, approve, and place Rate Order No. WAPA–126, the proposed P–SMBP—ED firm power, and firm peaking power rates into effect on an interim basis. The new Rate Schedules P–SED–F8 and P–SED–FP8 will be promptly submitted to the Commission for confirmation and approval on a final basis.

Dated: November 9, 2005.

Clay Sell,

Deputy Secretary.

Department of Energy, Deputy Secretary

In the Matter of: Western Area Power Administration; Rate Adjustment; Pick-Sloan Missouri Basin Program—Eastern Division

Order Confirming, Approving, and Placing the Pick-Sloan Missouri Basin Program—Eastern Division Firm Power and Firm Peaking Power Service Rates Into Effect on an Interim Basis

These rates were established in accordance with section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Acronyms and Definitions

As used in this Rate Order, the following acronyms and definitions apply:

Administrator: The Administrator of the Western Area Power Administration.

Capacity: The electric capability of a generator, transformer, transmission circuit, or other equipment. It is expressed in kW.

Capacity Charge: The rate which sets forth the charges for capacity. It is expressed in $ per kWmonth.

Commission: Federal Energy Regulatory Commission.

Composite Rate: The rate for commercial firm power which is the total annual revenue requirement for capacity and energy divided by the total annual energy sales. It is expressed in mills/kWh and used for comparison purposes.

Corps: United States Army Corps of Engineers.

CROD: Contract rate of delivery. The maximum amount of capacity made available to a preference customer for a period specified under a contract.

Customer: An entity with a contract that is receiving service from Western's Upper Great Plains Region.

Deficits: Deferred or unrecovered annual expenses.

DOE: United States Department of Energy.

DOE Order RA 6120.2: An order outlining with power marketing administration financial reporting and ratemaking procedures.

Energy: Measured in terms of the work it is capable of doing over a period of time. It is expressed in kilowatthours.

Energy Charge: The rate which sets forth the charges for energy. It is expressed in mills per kilowatthour and applied to each killowatthour delivered to each customer.

FERC: Federal Energy Regulatory Commission (to be used when referencing Commission Orders).

Firm: A type of product and/or service available at the time requested by the customer.

FRN: **Federal Register** notice.

Fry-Ark: Fryingpan-Arkansas Project.

FY: Fiscal year; October 1 to September 30.

Interior: United States Department of the Interior.

kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.

kWh: Kilowatthour—the electrical unit of energy that equals 1,000 watts in 1 hour.

kWmonth: Kilowattmonth—the electrical unit of the monthly amount of capacity.

LAP: Loveland Area Projects.

Load Factor: The ratio of average load in kW supplied during a designated period to the peak or maximum load in kW occurring in that period.

mills/kWh: Mills per kilowatthour—the unit of charge for energy (equal to one tenth of a cent or one thousandth of a dollar.)

MW: Megawatt—the electrical unit of capacity that equals 1 million watts or 1,000 kilowatts.

NEPA: National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

O&M: Operation and Maintenance.

P–SMBP: The Pick-Sloan Missouri Basin Program

P–SMBP—ED: Pick-Sloan Missouri Basin Program—Eastern Division

P–SMBP—WD: Pick-Sloan Missouri Basin Program—Western Division

Power: Capacity and energy.

Power Factor: The ratio of real to apparent power at any given point and time in an electrical circuit. Generally it is expressed as a percentage ratio.

Preference: The requirements of Reclamation Law which provide that preference in the sale of Federal power shall be given to municipalities and other public corporations or agencies and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made under the Rural Electrification Act of 1936 (Reclamation Project Act of 1939, section 9(c), 43 U.S.C. 485h(c)).

Provisional Rate: A rate which has been confirmed, approved and placed into effect on an interim basis by the Deputy Secretary.

PRS: Power Repayment Study.

Rate Brochure: A document explaining the rationale and background for the rate proposal contained in this Rate Order dated June 2005.

Reclamation: United States Department of the Interior, Bureau of Reclamation.

Reclamation Law: A series of Federal laws. Viewed as a whole, these laws create the originating framework under which Western markets power.

Revenue Requirement: The revenue required to recover annual expenses (such as O&M, purchase power, transmission service expenses, interest and deferred expenses) and repay Federal investments and other assigned costs.

RMR: The Rocky Mountain Customer Service Region of Western.

UGPR: The Upper Great Plains Customer Service Region of Western.

Western: United States Department of Energy, Western Area Power Administration.

Effective Date

The new provisional rates will take effect on the first day of the first full billing period beginning on or after January 1, 2006, and will remain in effect until December 31, 2010, pending approval by the Commission on a final basis.

Public Notice and Comment

Western followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, in developing these rates. The steps Western took to involve interested parties in the rate process were:

1. The proposed rate adjustment process began April 19, 2005, when Western mailed a notice announcing informal customer meetings to all P–SMBP—ED customers and interested parties. The meetings were held on May 10, 2005, in Denver, Colorado, and on May 11, 2005, in Sioux Falls, South Dakota. At these informal meetings, Western explained the rationale for the rate adjustment, presented rate designs and methodologies, and answered questions.

2. An FRN was published on June 16, 2005 (70 FR 35080) that announced the proposed rates for P–SMBP—ED, began a public consultation and comment period, and announced the public information and public comment forums.

3. On June 17, 2005, Western's UGPR mailed letters to all P–SMBP—ED preference customers and interested parties transmitting the FRN published on June 16, 2005.

4. On July 19, 2005, beginning at 10 a.m. (MDT), Western held a public information forum at the Radisson Stapleton Plaza in Denver, Colorado. On July 20, 2005, beginning at 8 a.m. (CDT), a second public information forum was held at Peru State College in Lincoln, Nebraska. On July 20, 2005, beginning at 2 p.m. (CDT), a third public information forum was held at the Sheraton Hotel and Convention Center in Sioux Falls, South Dakota. On July 21, 2005, beginning at 9 a.m. (CDT), a fourth public information forum was held at the Doublewood Inn in Fargo, North Dakota. Western provided detailed explanations of the proposed rates for P–SMBP—ED, and a list of issues that could change the proposed rates. Western also answered questions and gave notice that more information was available in the rate brochure.

5. On August 16, 2005, beginning at 9 a.m. (MDT), Western held a comment forum at the Radisson Stapleton Plaza in Denver, Colorado, to give the public an opportunity to comment for the record. No oral or written comments were received at this forum. On August 17, 2005, beginning at 9 a.m. (CDT), a second public comment forum was held at the Sheraton Hotel and Convention Center in Sioux Falls, South Dakota, to give the public an opportunity to comment for the record. Ten oral comments were received at this forum.

6. Western received 92 comment letters and 21 verbal comments from 94 entities during the consultation and comment period, which ended September 14, 2005. All formally submitted comments have been considered in preparing this Rate Order.

7. Western's UGPR provided a Web site with all of the letters, time frames, dates and locations of forums, documents discussed at the information meetings, FRNs, and all other information about this rate process for easy customer access. The Web site is located at *http://www.wapa.gov/ugp/rates/2006FirmRateAdj*.

Comments

Written comments were received from the following organizations:

Atlantic Municipal Utilities, Iowa
Basin Electric Power Cooperative, North Dakota
Breckenridge Public Utilities, Minnesota
Brown County Rural Electrical Association, Minnesota
Capital Electric Cooperative, Inc., North Dakota
Central Iowa Power Cooperative, Iowa
Central Power Electric Cooperative, Inc., North Dakota
City of Adrian, Minnesota
City of Akron, Iowa
City of Arlington, South Dakota
City of Auburn, Nebraska
City of Aurora, South Dakota
City of Benson, Minnesota
City of Big Stone City, South Dakota
City of Burke, South Dakota
City of Colman, South Dakota
City of Detroit Lakes, Minnesota
City of Estelline, South Dakota
City of Faith, South Dakota
City of Flandreau, South Dakota
City of Fort Pierre, South Dakota
City of Groton, South Dakota
City of Hawarden, Iowa
City of Howard, South Dakota
City of Jackson, Minnesota
City of Lakota, North Dakota
City of Luverne, Minnesota
City of Madison, South Dakota
City of McLaughlin, South Dakota
City of Melrose, Minnesota
City of Northwood, North Dakota
City of Orange City, Iowa
City of Parker, South Dakota
City of Paullina, Iowa
City of Pierre, South Dakota
City of Plankinton, South Dakota
City of Sioux Center, Iowa
City of Staples, Minnesota
City of Tyndall, South Dakota
City of Vermillion, South Dakota
City of Wadena, Minnesota
City of Watertown, South Dakota
City of Wessington Springs, South Dakota
City of White, South Dakota
City of Winner, South Dakota
Corn Belt Power Cooperative, Iowa
Dakota State University, South Dakota
Dawson Public Power District, Nebraska
East River Electric Power Cooperative, South Dakota
Federated Rural Electric, Minnesota
Hartley Municipal Utilities, Iowa
Heartland Consumers Power District, South Dakota
Lake Region Electric Cooperative, Minnesota
Lincoln Electric System, Nebraska
Manilla Municipal Utilities, Iowa
Marshall Municipal Utilities, Minnesota
McLeod Cooperative Power, Minnesota
Meeker Cooperative, Minnesota
Mid-West Electric Consumers Association, Colorado
Minnkota Power Cooperative, Inc., North Dakota
Missouri River Energy Services, South Dakota
Moorhead Public Service, Minnesota
Municipal Energy Agency of Nebraska, Nebraska
Nebraska Public Power District, Nebraska
Nobles Cooperative Electric, Minnesota
Northwest Iowa Power Cooperative, Iowa
Powder River Energy Corporation, Wyoming
Renville Sibley Cooperative Power Association, Minnesota
Rock Rapids Utilities, Iowa
Sanborn Municipal Light Plant, Iowa
Sauk Centre Public Utilities Commission, Minnesota
Sioux Valley Energy, South Dakota
Slope Electric Cooperative, Inc., North Dakota
South Dakota Municipal Electric Association, South Dakota
South Dakota Rural Electric Association
State of Montana-Department of Natural Resources and Conservation
State of South Dakota-Black Hills State University
State of South Dakota-Board of Regents
State of South Dakota-Bureau of Administration
State of South Dakota-Department of Corrections
State of South Dakota-Developmental Center/Redfield
State of South Dakota-Human Services Center
State of South Dakota-Mike Durfee State Prison
State of South Dakota-Northern State University
State of South Dakota-School of Mines and Technology
State of South Dakota-South Dakota State Penitentiary
State of South Dakota-South Dakota State University
Town of Pickstown, South Dakota
Town of Langford, South Dakota
Valley City Public Works, North Dakota
Valley Electric Cooperative, Montana
Woodbine Municipal Utilities, Iowa

Representatives of the following organizations made oral comments:

Basin Electric Power Cooperative, North Dakota
City of Barnesville, Minnesota.
City of Harlan, Iowa
City of Wadena, Minnesota
East River Electric Power Cooperative Inc., South Dakota
Federated Rural Electric, Minnesota
Lake Region Electric Cooperative, Minnesota
Lincoln Electric System, Nebraska
Mid-West Electric Consumers Association, Colorado
Minnkota Power Cooperative Inc., North Dakota
Missouri River Energy Services, South Dakota
Moorhead Public Service, Minnesota
Nebraska Public Power District, Nebraska
Valley City Public Works, North Dakota

Project Description

The P–SMBP was authorized by Congress in section 9 of the Flood Control Act of December 22, 1944, commonly referred to as the 1944 Flood Control Act. The multipurpose program provides flood control, irrigation, navigation, recreation, preservation and enhancement of fish and wildlife, and power generation. Multipurpose projects have been developed on the Missouri River and its tributaries in Colorado, Montana, Nebraska, North Dakota, South Dakota and Wyoming.

In addition to the multipurpose water projects authorized by section 9 of the Flood Control Act of 1944, certain other existing projects have been integrated with the P–SMBP for power marketing, operation and repayment purposes. The Colorado-Big Thompson, Kendrick and Shoshone Projects were combined with the P–SMBP in 1954, followed by the North Platte Project in 1959. These projects are referred to as the ''Integrated Projects'' of the P–SMBP.

The Flood Control Act of 1944 also authorized the inclusion of the Fort Peck Project with the P–SMBP for operation and repayment purposes. The Riverton Project was integrated with the P–SMBP in 1954, and in 1970 was reauthorized as a unit of P–SMBP.

The P–SMBP is administered by two regions. The UGPR with a regional office in Billings, Montana, markets power from the Eastern Division of P–SMBP, and the RMR with a regional office in Loveland, Colorado, markets the Western Division power of P–SMBP. The UGPR markets power in western Iowa, Minnesota, Montana east of the Continental Divide, North Dakota, South Dakota and the eastern two-thirds of Nebraska. The RMR markets P–SMBP power and Fry-Ark power, which in combination with P–SMBP—WD is known as LAP power, in northeastern Colorado, east of the Continental Divide

in Wyoming, west of the 101st meridian in Nebraska and northern Kansas. The P–SMBP power is marketed to approximately 300 firm power customers by the UGPR and approximately 40 firm power customers by the RMR.

Power Repayment Study—Firm Power Rate

Western prepares a PRS each FY to determine if revenues will be sufficient to repay, within the required time, all costs assigned to the P–SMBP revenues. Repayment criteria are based on law, policies including DOE Order RA 6120.2, and authorizing legislation. To meet Cost Recovery Criteria outlined in DOE Order RA 6120.2, a revised study and rate adjustment has been developed to demonstrate that sufficient revenues will be collected to meet future obligations.

Under this adjustment, payments toward irrigation assistance and capital debt are necessary before deficits are completely repaid. Traditionally, prepayment of irrigation assistance or capital is only done in the absence of deficits. However, if all revenue were applied toward deficits prior to making any payments for irrigation and other capital requirements, an extraordinarily large rate increase to meet single year repayment obligations would be required. Once these single year repayment obligations were satisfied, another rate adjustment would be necessary to decrease the rates. While repayment of capital debt and irrigation assistance prior to complete repayment of deficits is not typical, the approach approved within this Rate Order is well within the bounds of the discretion allowed under DOE Order RA 6120.2.

Under this adjustment, Western will repay all deficits and also make previously planned payments for irrigation assistance and other investments that are due in the years 2013 and 2014. Prepaying irrigation and capital investments has been part of the Pick-Sloan repayment plans and approved rate adjustments for the past 20 years. They are an integral part of the long-term plan for the project and have provided rate stability for consumers while meeting Federal repayment obligations. Modest irrigation and investment payments for a brief period of 2 to 3 years will reduce the single-year revenue requirement for irrigation assistance and hold increases to the ''lowest possible rates to consumers consistent with sound business principles,'' as outlined in section 5 of the Flood Control Act of 1944.

The provisional rates for P–SMBP—ED will be implemented in two steps. First step provisional rates are to become effective on an interim basis on the first day of the first full billing period beginning on or after January 1, 2006. Second step provisional rates are to become effective on the first day of the first full billing period beginning on or after January 1, 2007. Under Rate Schedule P–SED–F8, the first and second step provisional rates for P–SMBP—ED firm power will result in a total compounded composite rate increase of approximately 18.4 percent. The current composite rate under Rate Schedule P–SED–F7 is 16.51 mills/kWh. The provisional composite rate is 19.54 mills/kWh.

Existing and Provisional Rates

A comparison of the existing and provisional firm power and firm peaking power rates follow:

COMPARISON OF EXISTING AND PROVISIONAL RATES PICK-SLOAN MISSOURI BASIN PROGRAM—EASTERN DIVISION

Firm electric service	Existing rates	First step rates Jan. 1, 2006	Percent change	Second step rates Jan. 1, 2007	Percent change
P–SMBP—ED Revenue Requirement.	$160.1 million	$179.4 million	12.1	$189.9 million	5.9
P–SMBP—ED Composite Rate.	16.51 mills/kWh	18.47 mills/kWh	11.9	19.54 mills/kWh	5.8
Firm Capacity	$3.72/kWmonth	$4.20/kWmonth	12.9	$4.45/kWmonth	6.0
Firm Energy	9.62 mills/kWh	10.69 mills/kWh	11.1	11.29 mills/kWh	5.6
Tiered > 60 Percent Load Factor.	5.21 mills/kWh	5.21 mills/kWh	0.0	5.21 mills/kWh	0.0
Firm Peaking Capacity	$3.72/kWmonth	$4.20/kWmonth	12.9	$4.45/kWmonth	6.0
Firm Peaking Energy [1]	9.62 mills/kWh	10.69 mills/kWh	11.1	11.29 mills/kWh	5.6

[1] Firm Peaking Energy is normally returned. This rate will be assessed in the event Firm Peaking Energy is not returned.

Western Division

The LAP rate will be designed to cover the P–SMBP—WD revenue requirement for the P–SMBP and the revenue requirement for Fry-Ark. The adjustment to the LAP rate is a separate formal rate process which is documented in Rate Order No. WAPA–125. Rate Order No. WAPA–125 is also scheduled to go into effect on the first day of the first full billing period beginning on January 1, 2006.

Certification of Rates

Western's Administrator certified that the provisional rates for P–SMBP—ED firm power and firm peaking power rates are the lowest possible rates consistent with sound business principles. The provisional rates were developed following administrative policies and applicable laws.

P–SMBP—ED Firm Power Rate Discussion

According to Reclamation Law, Western must establish power rates sufficient to recover operation, maintenance, purchased power and interest expenses and repay power investment and irrigation aid.

The P–SMBP—ED firm power and firm peaking power rates must be increased due to the economic impact of the drought, increased O&M and other annual expenses, increased investments, and increased interest expense associated with deficits. The studies have also been adjusted to account for calendar year implementation versus a fiscal year implementation.

The existing rates for P–SMBP—ED firm power and firm peaking power under Rate Schedules P–SED–F7 and P–SED–FP7 expire December 31, 2008. Effective January 1, 2006, Rate Schedules P–SED–F7 and P–SED–FP7 will be superseded by the new rates in Rate Schedule P–SED–F8s and Rate Schedule P–SED–FP8. The provisional rates for P–SED–F8 firm power consist of a capacity charge and an energy charge. The provisional capacity charge is $4.45/kWmonth, and the provisional energy charge is 11.29 mills/kWh.

Statement of Revenue and Related Expenses

The following table provides a summary of projected revenue and expense data for the P–SMBP—ED firm power rate through the 5-year provisional rate approval period.

P–SMBP—ED FIRM POWER COMPARISON OF 5-YEAR RATE PERIOD (FY 2006–FY 2010) TOTAL REVENUES AND EXPENSES

	Existing rate ($000)	Proposed rate ($000)	Difference ($000)
Total Revenues	$1,497,654	$1,694,242	$196,588
Revenue Distribution			
Expenses:			
O&M	762,873	832,279	69,406
Purchased Power and Wheeling	60,882	276,203	215,320
Integrated Projects Requirements	0	0	0
Interest	435,196	482,809	47,613
Transmission	67,063	70,537	3,474
Total Expenses	1,326,014	1,661,827	335,813
Principal Payments:			
Capitalized Expenses	169,152	30,764	(138,388)
Original Project and Additions [1]	1,128	1,128	0
Replacements [1]	1,360	523	(837)
Irrigation	0	0	0
Total Principal Payments	171,641	32,416	(139,225)
Total Revenue Distribution	1,497,654	1,694,242	196,588

[1] Due to the deficit or near-deficit conditions between 1999 and 2007, revenues generated in the cost evaluation period are applied toward repayment of deficits rather than repayment of project, additions and replacements. All deficits are projected to be repaid by 2017.

Basis for Rate Development

The existing rates for P–SMBP—ED firm power in Rate Schedule P–SED–F7 expire December 31, 2008. The existing rates no longer provide sufficient revenues to pay all annual costs, including interest expense, and repay investment and irrigation aid within the allowable period. The adjusted rates reflect increases due to the economic impact of the drought, increased O&M and other annual expenses, increased investments, and increased interest expense associated with deficits. The studies have also been adjusted to account for calendar year implementation versus fiscal year implementation. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repay power investment and irrigation aid within the allowable periods. The provisional rates will take effect on January 1, 2006, to correspond with the start of the calendar year, and will remain in effect through December 31, 2010.

The P–SMBP—ED provisional firm power rate is designed to recover 50 percent of the revenue requirement from the capacity rate and 50 percent from the energy rate. The capacity rate of $4.45 per kWmonth is calculated by dividing 50 percent of the total annual revenue by the number of billing units (kWmonths) in a year. The energy rate of 11.29 mills/kWh is calculated by dividing 50 percent of the total annual revenue requirement by the annual energy sales. The capacity rate is applied to both firm power and firm peaking power. The energy rate is applied to firm energy and firm peaking energy that is not returned to Western.

The P–SMBP—ED firm peaking rate is equal to the capacity charge for the firm power rate. The firm peaking customer pays the capacity rate on their total firm peaking CROD each month rather than firm peaking delivered each month. Contract terms vary among firm peaking customers with respect to return of peaking energy. One firm peaking customer returns all peaking energy, while the other peaking customer may pay for 20 to 40 percent of the peaking energy they use and return the rest to Western. When a firm peaking customer keeps peaking energy the rate paid is the same as the firm energy rate.

Comments

The comments and responses regarding the firm power rate, paraphrased for brevity when not affecting the meaning of the statement(s), are discussed below. Direct quotes from comment letters are used for clarification where necessary.

A. *Comment:* Western received numerous comments that strongly supported Western's original rate adjustment proposal which included a 2-step adjustment, calendar year implementation, no change to the tiered rate, and the proposed rates.

Response: Western appreciates the support it has received from the public for the original rate adjustment proposal.

B. *Comment:* One customer commented that Western should spread this rate increase into future years to help lessen the impact to its customers. Western received one comment preferring equal increases in each of the 2 years rather than the proposed approximate two-thirds and one-third plan.

Response: In accordance with DOE Order RA 6120.2, Western set the rate such that it is the lowest possible consistent with sound business principles. By adopting the 2-step rate adjustment, Western has spread the impact of the rate increase on the customers over a longer time. Spreading the rate increase over additional years or equal rate increases would cause the cumulative deficit to increase substantially and would not be consistent with sound business principles.

C. *Comment:* During the comment period, Western received 90 written comments and 21 verbal comments concerning the proposed Peaking Power Capacity Alternative. By far, most commenters indicated that Western should not accept the Peaking Power

Capacity Alternative because implementing a change in rate methodology would require a new rate design. Commenters also stated that shifting costs from firm peaking capacity customers to firm power customers is inappropriate, inequitable, and unjustified. Commenters suggested that peaking customers are getting a superior product, particularly in the summer season, to what other firm power customers are getting because they do not take as much off-peak energy, are not subject to load following scheduling limitations, and have very generous energy payback provisions or can buy high-value energy at the firm power rate. One peaking supporter commented that Western is obligated to act in the best interest of the entire customer base.

Several comments stated that Western should accept the Peaking Power Capacity Alternative based on it being more equitable in distributing the costs driving the rate increase. It was stated that due to the drought Western has purchased power, both on and off peak, in every month and given the terms of the peaking contracts, it is not equitable to include all these costs in the peaking customers' rates because they do not receive energy in every month. These commenters suggested that requiring peaking customers to pay a demand charge in months of no usage penalizes these customers and significantly increases the cost of power purchased under the peaking contract. Additionally, comments state that the peaking contract load factor has decreased since the inception of the contract and is significantly lower than the firm contract load factor. One firm peaking power customer stated that the effective cost of peaking power in 2004, after return of energy to Western, was $304/MWh in the summer and $2,914/MWh in the winter season. Another firm peaking power customer stated that its average per unit cost of firm power was $17.57/MWh and the cost for peaking power was $3,750/MWh. That customer also commented it participates in the energy markets on a daily basis and understands the value of the peaking contract. It stated this cost comparison is not used to prove that firm peaking is overpriced; instead it demonstrates that the products are different. Lastly, several comments suggest that operating applications under the contract are too restrictive.

Response: Because several customers indicated there was rate inequity between the firm peaking power product and the firm power product, Western included the Peaking Power Capacity Alternative in the Notice of Proposed Power Rates. Outlining the concerns of the peaking customers gives the public an opportunity to provide reasonable and logical documentation indicating that there is an inequity in rates charged for the firm peaking power product and the firm power product through the public process. While firm peaking power customers do receive several benefits from the firm peaking power product beyond those available to firm power product customers, Western does not recognize the firm peaking power product to be superior to the firm power product. Western does not find that comments supporting the Peaking Power Capacity Alternative provide an in-depth evaluation with supporting data to demonstrate inequities in charges between the products. To support the rate inequity between the firm power product and the peaking power product, a few comments used an energy cost analysis. In determining the true value of the firm peaking power product, Western believes it is unreasonable to focus solely on the energy component while ignoring the benefits of the capacity portion of the product. Comments supporting the Peaking Power Capacity Alternative also point to energy purchases as the majority of costs requiring the rate adjustment. They make the argument that energy purchase costs due to drought conditions are primarily associated with the firm power product and, therefore, a larger portion of the rate adjustment should be attributed to the firm power product. A thorough analysis of inequities between the firm peaking power product and the firm power product must look at the effect of energy sales as well as energy purchases. While it is true that energy purchases during a drought apply upward pressure on Western's rates, it is also true that surplus sales apply downward pressure during high water years. The comments fail to recognize that non-firm energy sales are the primary reason that both the firm peaking power product and the firm power product both enjoyed flat rates for the 10 years preceding the current drought period.

Western has determined that the rate increase should be spread among both firm power and firm peaking power customers following the practice historically used. Those comments received regarding the restrictions to the operational application of the firm peaking power product are outside the scope of this rate adjustment process. However, Western is willing to look at the operational applications and review possible restrictions to ensure equity in the firm peaking power product for all firm peaking power customers through Western's normal contract administration procedures. After considering the comments, Western has determined at this time it cannot justify moving to the Firm Peaking Capacity Alternative.

D. *Comment:* Western received one comment of concern that adequate long-term purchased power arrangements have not been pursued by the UGPR.

Response: Western continues to look into long-term purchased power arrangements on a seasonal basis. However, at this time long-term purchases that are available are not the most cost beneficial method of meeting Western purchase power requirements.

E. *Comment:* Western received one comment that encouraged Western to investigate ways to maximize the value of its assets, including transmission rights across neighboring systems and high-value transmission rights across constrained paths.

Response: Western continually looks for ways to increase revenues and decrease costs, including maximizing the use of the transmission system. However, Western has determined that this particular comment is not directly related to the proposed action and is outside the scope of this rate process.

Availability of Information

Information about this rate adjustment, including PRSs, comments, letters, memorandums and other supporting material made or kept by Western used to develop the provisional rates, is available for public review in the Upper Great Plains Regional Office, Western Area Power Administration, 2900 4th Avenue North, Billings, Montana.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*); Council

on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Submission to the Federal Energy Regulatory Commission

The provisional rates herein confirmed, approved, and placed into effect, together with supporting documents, will be submitted to the Commission for confirmation and final approval.

Order

In view of the foregoing and under the authority delegated to me, I confirm and approve on an interim basis, effective January 1, 2006, Rate Schedules P–SED–F8 and P–SED–FP8 for the Pick-Sloan Missouri Basin Program—Eastern Division of the Western Area Power Administration. The rate schedules shall remain in effect on an interim basis, pending the Commission's confirmation and approval of them or substitute rates on a final basis through December 31, 2010.

Dated: November 9, 2005.

Clay Sell,

Deputy Secretary.

Rate Schedule P–SED–F8; (Supersedes Schedule P–SED–F7)

Department of Energy, Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division Montana, North Dakota, South Dakota, Minnesota, Iowa, Nebraska

Schedule of Rates for Firm Power Service

Effective

First Step

The first day of the first full billing period beginning on or after January 1, 2006, through December 31, 2006.

Second Step

Beginning on the first day of the first full billing period beginning on or after January 1, 2007, through December 31, 2010.

Available

Within the marketing area served by the Eastern Division of the Pick-Sloan Missouri Basin Program.

Applicable

To the power and energy delivered to customers as firm power service.

Character and Conditions of Service

Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate

First Step

Demand Charge: $4.20 for each kilowatt per month (kWmonth) of billing demand.

Energy Charge: 10.69 mills for each kilowatthour (kWh) for all energy delivered as firm power service. An additional charge of 5.21 mills/kWh, for a total of 15.90 mills/kWh, will be assessed for all energy delivered as firm power service that is in excess of a 60-percent monthly load factor and within the delivery obligations under the provisions of the power sales contract.

Billing Demand

The billing demand will be as defined by the power sales contract.

Second Step

Demand Charge: $4.45 for each kWmonth of billing demand.

Energy Charge: 11.29 mills for each kWh for all energy delivered as firm power service. An additional charge of 5.21 mills/kWh for a total of 16.50 mills/kWh will be assessed for all energy delivered as firm power service that is in excess of a 60 percent monthly load factor and within the delivery obligations under the provisions of the power sales contracts.

Billing Demand

The billing demand will be as defined by the power sales contract.

Adjustment for Character and Conditions of Service

Customers who receive deliveries at transmission voltage may in some instances be eligible to receive a 5 percent discount on capacity and energy charges when facilities are provided by the customer that result in a sufficient savings to Western to justify the discount. The determination of eligibility for receipt of the voltage discount shall be exclusively vested in Western.

Adjustment for Billing of Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overrun shall be billed at 10 times the above rate.

Adjustment for Power Factor

None. The customer will be required to maintain a power factor at the point of delivery between 95 percent lagging and 95 percent leading.

Schedule of Rates for Firm Peaking Power Service

Effective

First Step

The first day of the first full billing period beginning on or after January 1, 2006, through December 31, 2006.

Second Step

Beginning on the first day of the first full billing period beginning on or after January 1, 2007, through December 31, 2010.

Available

Within the marketing area served by the Eastern Division of the Pick-Sloan Missouri Basin Program, to our customers with generating resources enabling them to use firm peaking power service.

Applicable

To the power sold to customers as firm peaking power service.

Character and Conditions of Service

Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate

First Step

Demand Charge: $4.20 for each kilowatt per month (kWmonth) of the effective contract rate of delivery for peaking power or the maximum amount scheduled, whichever is greater.

Energy Charge: 10.69 mills for each kilowatthour (kWh) for all energy scheduled for delivery without return.

Billing Demand

The billing demand will be the greater of:

1. The highest 30 minute integrated demand measured during the month up to, but not in excess of, the delivery obligation under the power sales contract, or
2. The contract rate of delivery.

Second Step

Demand Charge: $4.45 for each kWmonth of the effective contract rate of delivery for peaking power or the maximum amount scheduled, whichever is greater.

Energy Charge: 11.29 mills for each kWh for all energy scheduled for delivery without return.

Billing Demand

The billing demand will be the greater of:

1. The highest 30 minute integrated demand measured during the month up to, but not in excess of, the delivery obligation under the power sales contract, or
2. The Contract Rate of Delivery.

Adjustment for Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for peaking capacity and/or energy, such overrun shall be billed at 10 times the above rate.

[FR Doc. E5–6576 Filed 11–25–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0087; FRL–8003–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides, EPA ICR Number 0161.10, OMB Control Number 2070–0027

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces the submission of an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval and provides an additional public review and comment opportunity. This is a request to renew an existing approved collection that is scheduled to expire on January 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. The ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 28, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OPP–2005–0087, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *http://www.epa.gov/edocket*, or by mail to: EPA Docket Center, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nathanael R. Martin, Field and External Affairs Division, Office of Pesticide Programs, 7506C, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–6475; fax number: 703–305–5884; e-mail address: *martin.nathanael@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 20, 2005, (70 FR 20540), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment which is addressed in the supporting statement.

EPA has established a public docket for this ICR under Docket ID No. OPP–2005–0087, which is available for viewing online at *http://www.epa.gov/edocket*, or in person at the Public Information and Records Integrity Branch, Office of Pesticide Programs Docket, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket go to *www.epa.gov/edocket.*

Title: Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides.

ICR Numbers: EPA ICR Number 0161.10, OMB Control Number 2070–0027.

Abstract: This information collection program is designed to enable EPA to provide notice to foreign purchasers of unregistered pesticides exported from the United States that the pesticide product cannot be sold in the United States. Section 17(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires an exporter of any pesticide not registered under FIFRA section 3 or sold under FIFRA section 6(a)(1) to obtain a signed statement from the foreign purchaser acknowledging that the purchaser is aware that the pesticide is not registered for use in, and cannot be sold in, the United States. A copy of this statement must be transmitted to an appropriate official of the government in the importing country. The purpose of the purchaser acknowledgment statement requirement is to notify the government of the importing country that a pesticide judged hazardous to human health or the environment, or for which no such hazard assessment has been made, will be imported into that country. This information is submitted in the form of annual or per-shipment statements to

EPA, which maintains original records and transmits copies thereof to appropriate government officials of the countries which are importing the pesticide.

Burden Statement: Under the PRA, ''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. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 24,700. The following is a summary of the estimates taken from the ICR:

Respondents/Affected Entities: All exporters of unregistered pesticides.

Estimated Number of Respondents: 2,500.

Frequency of Response: Annual or per-shipment.

Estimated Total Annual Hour Burden: 24,700.

Estimated Total Annual Burden Cost: $2,134,400.

Changes in the Estimates: The total annual respondent burden cost for this ICR is estimated to be $2,134,400, an increase of $232,000 over the present ICR. This slight increase in respondent burden cost is due to adjustments in labor rates.

Dated: October 3, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E5–6589 Filed 11–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2005–0007; FRL–8002–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Information Requirements for Boilers and Industrial Furnaces: General Hazardous Waste Facility Standards, Specific Unit Requirements, and Part B Permit Application and Modification Requirements (Renewal), EPA ICR Number 1361.10, OMB Control Number 2050–0073

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on December 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 28, 2005.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2005–0007, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *rcra-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, RCRA Docket, Mail Code 5305T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shiva Garg, Office of Solid Waste, Mail Code 5302W, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–8459; fax number: (703) 308–8433; e-mail address: *garg.shiva@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 21, 2005 (70 FR 20748), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. RCRA–2005–0007, which is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Information Requirements for Boilers and Industrial Furnaces: General Hazardous Waste Facility Standards, Specific Unit Requirements, and Part B Permit Application and Modification Requirements (Renewal).

Abstract: EPA regulates the burning of hazardous waste in boilers, incinerators,

and industrial furnaces (BIFs) under 40 CFR parts 63, 264, 265, 266 and 270. This ICR describes the paperwork requirements that apply to the owners and operators of BIFs. This includes the requirements under the comparable/ syngas fuel specification at 40 CFR 261.38; the general facility requirements at 40 CFR parts 264 and 265, subparts B thru H; the requirements applicable to BIF units at 40 CFR part 266; and the RCRA Part B permit application and modification requirements at 40 CFR part 270. Examples of paperwork collected under these requirements include one-time notices, certifications, waste analysis data, inspection and monitoring records, plans reports, RCRA Part B permit applications and modifications. The responses to the collection of information are mandatory. EPA needs this information for the proper implementation, compliance tracking, and fulfillment of the congressionally delegated mandate under RCRA to protect public health and the environment. EPA, however, has taken steps to minimize the burden imposed on the facilities, and ensures the confidentiality of the provided information by complying with section 3007(b) of RCRA, Privacy Act of 1974 and OMB Circular #108. Based on information from the EPA Regions, we estimated at last renewal of this ICR that 91 BIF facilities are subject to the RCRA hazardous waste program. Of these, we estimate that 32 BIFs are currently under interim status and the remaining 59 are in permitted status. This renewal takes into account the current universe of the BIF facilities, and the current regulations applicable to them based on the amendments made to date.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2,626 hours per facility. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Business or other for-profit entities.

Estimated Number of Respondents: 91.

Frequency of Response: Varies (from on-occasion to annually).

Estimated Total Annual Hour Burden: 238,997 hours.

Estimated Total Annual Cost: $33,665,000, includes $ 7,855,000 annualized capital/ startup cost, $9,880,000 annual O&M costs and $15,930,000 annual labor costs.

Changes in the Estimates: There is a decrease of 68,952 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is the result of a program change of 50,188 hours due to the transitioning of burden into another ICR (#1773.08, OMB Control Number 2050–0171) as a result of the newly promulgated MACT rule under the Clean Air Act, and an adjustment of 18,764 hours due to a change in the respondent universe.

Dated: November 16, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E5–6590 Filed 11–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2005–0006, FRL–8002–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Willingness To Pay Survey for Section 316(b) Phase III Cooling Water Intake Structures: Instrument, Pre-Test, and Implementation; EPA ICR Number 2155.02

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 28, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2005–0006, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *ow-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, EPA West, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Erik Helm, Office of Science and Technology, Mail Code 4303T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–1066; fax number: 202–566–1054; e-mail address: *helm.erik@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 9, 2005, (70 FR 33746), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comments received.

EPA has established a public docket for this ICR under Docket ID number OW–2005–0006, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material,

CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Willingness to Pay Survey for section 316(b) Phase III Cooling Water Intake Structures: Instrument, Pre-test, and Implementation

Abstract: The U.S. Environmental Protection Agency is in the process of developing new regulations to provide national performance standards for controlling impacts from cooling water intake structures (CWIS) for Phase III facilities under section 316(b) of the Clean Water Act (CWA). Phase III under Clean Water Act section 316(b) regulations applies to facilities that withdraw water for cooling purposes from rivers, streams, lakes, reservoirs, estuaries, oceans, or other waters of the United States, and that are either existing electrical generators with cooling water intake structures that are designed to withdraw 50 million gallons of water per day (MGD) or less, or existing manufacturing and industrial facilities. The regulation also establishes section 316(b) requirements for new offshore oil and gas extraction facilities. EPA has previously published final section 316(b) regulations that address new facilities (Phase I) on December 18, 2001 (66 FR 65256) and existing large power producers (Phase II) on July 9, 2004 (69 FR 41576). See 40 CFR part 125, subparts I and J, respectively.

As required under Executive Order 12866, EPA is conducting economic impact and cost-benefit analyses for the section 316(b) regulation for Phase III facilities. Comprehensive, estimates of total resource value include both use and non-use values, such that the resulting total social benefit estimates may be compared to total social cost. Many public comments on the proposed section 316(b) regulation for Phase II facilities and the Phase II Notice of Data Availability suggested that a properly designed and conducted stated preference, or contingent valuation (CV), survey would be the most appropriate and acceptable method to estimate the non-use benefits of the rule. Stated preference survey methodology is the generally accepted means to estimate non-use values. To assess public policy significance or importance of the ecological gains from the section 316(b) regulation for Phase III facilities, EPA proposes to conduct a stated preference study to measure non-use benefits of reduced fish losses at CWIS due to the regulation.

The survey will ask respondents to choose how they would vote, if presented with two different hypothetical regulatory options characterized by (a) changes in annual impingement and entrainment losses of fish and other organisms, (b) effects on long-term fish populations, (c) effects on recreational and commercial catch, and (d) an unavoidable cost of living increase for the respondent's household. Respondents will be allowed to ''vote'' for one of the presented regulatory options, or to choose not to vote for either option. The survey will also ask respondents to answer questions about their reasons for voting, their level of concern about various policy issues, and their affiliations and recreational activities.

Survey subjects will be randomly selected from a representative national panel of respondents maintained by Knowledge Networks, an online survey company. Subjects will be asked to complete a web-based questionnaire. Participation in the survey is voluntary. Additionally, EPA will conduct non-response follow-up interviews with 600 individuals, and will use statistical techniques to correct for unobserved heterogeneity in the survey data.

To assist in the development of this stated preference survey, EPA previously obtained approval from the Office of Management and Budget to conduct a series of twelve focus groups with a total of 96 respondents (see EPA ICR number 2155.01, OMB number 2040–0262.

EPA received several comments on the proposed ICR for this survey. Many comments provided specific reasons why the survey might overestimate or underestimate willingness to pay to prevent fish losses. Almost all of these comments have been addressed through the focus groups and cognitive interviews, which have helped the Agency to improve the survey.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 41 minutes per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Individuals greater than 18 years of age/households.

Estimated Number of Respondents: 5,000.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 3,383 hours.

Estimated Total Annual Cost: $59,919. EPA estimates that there will be no capital or O&M costs.

Dated: November 16, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E5–6591 Filed 11–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2005–0017; FRL–8002–7]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Bulk Gasoline Terminals (Renewal); EPA ICR Number 0664.08; OMB Control Number 2060–0006

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved

collection. This ICR is scheduled to expire on December 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 28, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2005–0017, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Maria Malavé, Compliance Assessment and Media Programs Division, Mail Code 2223A, Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; e-mail address: *malave.maria@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 6, 2005 (70 FR 24020), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2005–0017, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search'', then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: NSPS for Bulk Gasoline Terminals (Renewal).

Abstract: The New Source Performance Standards (NSPS) were proposed on December 17, 1980 and promulgated on August 18, 1983, and amended on December 22, 1983. These standards apply to the total of all loading racks at bulk gasoline terminals that deliver liquid product into gasoline tank trucks and for which construction, modification or reconstruction commenced after the date of proposal. A bulk gasoline terminal is any gasoline facility that receives gasoline by pipeline, ship or barge, and has a gasoline throughput greater than 75,700 liters per day. The affected facility includes the loading arms, pumps, meters, shutoff valves, relief valves, and other piping and valves necessary to fill delivery tank trucks. Volatile organic chemicals (VOCs) are the pollutants regulated under this subpart.

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility that may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Monitoring requirements specific to bulk gasoline terminals are listed in 40 CFR 60.505. These requirements consist of identifying and documenting vapor tightness for each gasoline tank truck that is loaded at the affected facility, and notifying the owner or operator of each tank truck that is not vapor-tight. The owner or operator must also perform a monthly visual inspection for liquid or vapor leaks, and maintain records of these inspections at the facility.

This information is being collected to assure compliance with 40 CFR part 60, subpart XX. Any owner or operator subject to the provisions of this part will maintain a file of these records, and retain the file for at least two years following the date of such records. The reporting requirements for this industry currently include only the initial notifications and initial performance test report listed above. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 329 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to 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; to adjust the existing ways to comply with any previously applicable instructions and requirements; to train personnel to be

able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

Respondents/Affected Entities: Bulk gasoline terminals with affected facilities including loading arms, pumps, meters, shutoff valves, relief valves, and other piping.

Estimated Number of Respondents: 40.

Frequency of Response: Initially and on occasion.

Estimated Total Annual Hour Burden: 3,168 hours.

Estimated Total Annual Costs: $1,062,809, which includes $0 annualized Capital expense/Startup costs, $0 annual Operation and Maintenance costs, and $1,062,809 Respondent Labor costs per year.

Changes in the Estimates: There is an increase of 1,748 hours in the total estimated industry burden currently identified in the OMB Inventory of Approved ICR Burdens.

This increase in labor burden is due to a correction of the frequency of recording leak detection inspection data from one occurrence per year to monthly occurrences as required by the rule and the inclusion of labor hours for the management and clerical employees. The total industry cost also increased from $631,983 to $1,062,809 as a result of these changes and the use of an updated technical labor rate.

Dated: November 17, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E5–6600 Filed 11–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0034; FRL–8002–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting Requirements Under EPA's Voluntary Aluminum Industrial Partnership (VAIP) (Renewal), EPA ICR Number 1867.03, OMB Control Number 2060–0411

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on December 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 28, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0034, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sally Rand, Office of Atmospheric Programs, 6207J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 202–343–9739; fax number: 202–343–2208; e-mail address: *rand.sally@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 25, 2005 (70 FR 49920), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0034, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: Reporting Requirements Under EPA's Voluntary Aluminum Industrial Partnership (VAIP) (Renewal).

Abstract: EPA's Voluntary Aluminum Industrial Partnership (VAIP) was initiated in 1995 and is an important voluntary program contributing to the overall reduction in emissions of greenhouse gases. This program focuses on reducing direct greenhouse gas emissions including perfluorocarbon (PFC) and carbon dioxide (CO_2) emissions from the production of primary aluminum. Seven of the eight U.S. producers of primary aluminum participate in this program. PFCs are very potent greenhouse gases with global warming potentials several thousand times that of carbon dioxide and they persist in the atmosphere for thousands of years. CO_2 is emitted from consumption of the carbon anode. EPA has developed this ICR to renew authorization to collect information from companies in the VAIP. Participants voluntarily agree to the following: Designating a VAIP liaison; undertaking technically feasible and cost-effective actions to reduce PFC and direct CO_2 emissions; and reporting to EPA, on an annual basis, the PFC and CO_2 emissions or production parameters use to estimate emissions. The information contained in the annual

reports of VAIP members is used by EPA to assess the success of the program in achieving its goals. The information contained in the annual reports may be considered confidential business information and is maintained as such. 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.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 98 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Primary Production of Aluminum.

Estimated Number of Respondents: 7.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 689.

Estimated Total Annual Cost: $51,478, which includes $0 annualized capital/startup costs, $0 annual O&M costs, and $51,478 annual labor costs.

Changes in the Estimates: There is an increase of 105 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to additional incremental effort to collect and report annual direct carbon dioxide (CO_2) emissions data in addition to perfluorocarbon (PFC) data. Direct CO_2 emissions result from the consumption of the carbon anode during the production of primary aluminum.

Dated: November 16, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E5–6601 Filed 11–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8003–2]

Science Advisory Board Staff Office; Notification of a Science Advisory Board Workshop: Science for Valuation of EPA's Ecological Protection Decisions and Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) is conducting a workshop on Science for Valuation of EPA's Ecological Protection Decisions and Programs. The Workshop is open to public observers, however, seating for the public is limited and available on a first-come basis to those who pre-register (see Workshop Registration Instructions, below).

DATES: The SAB Workshop will be held on Tuesday, December 13, 2005, from 9 a.m. until 6 p.m., and from 8:30 a.m. until 12 p.m. on Wednesday, December 14, 2005.

ADDRESSES: The SAB Workshop will be held at the Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this workshop should contact Ms. Marie Gernes, EPA Science Advisory Board Staff Office (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 343–9975; Fax (202) 233–0643; or via e-mail at *gernes.marie@epa.gov*. General information about the EPA Science Advisory Board may be found on the SAB Web site (*http://www.epa.gov/sab*).

Workshop Registration Instructions: Members of the public wishing to observe the Workshop must pre-register no later than 12 noon Eastern Time on Monday, December 5, 2005. Please pre-register via e-mail or fax to Ms. Marie Gernes (see above information), providing your name, title, organization, mailing address, phone and e-mail.

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB Committee on Valuing the Protection of Ecological Systems and Services (C–VPESS) is undertaking a study to assess the current state of science in this area. The SAB is convening this workshop to learn about recent developments in ecological valuation methods and better understand the potential applications and implications of these methods for valuation programs at EPA. The Workshop participants will include advisory members of the SAB, the Clean Air Scientific Advisory Committee (CASAC), the Advisory Council on Clean Air Compliance Analysis (Council), their committees, and invited EPA and outside experts in valuation of ecological services.

A draft Workshop agenda is posted on the SAB Web site under ''Recent Additions'' (*http://www.epa.gov/sab/whatsnew.htm*). An updated agenda will be posted prior to the Workshop. Workshop Proceedings will be made available at a date to be announced on the SAB Web site.

Accessibility: For information on access or services for individuals with disabilities, please contact Ms. Marie Gernes at 202–343–9975 or *gernes.marie@epa.gov*. To request accommodation of a disability, please contact Ms. Gernes, preferably at least ten days prior to the workshop, to give EPA as much time as possible to process your request.

Dated: November 18, 2005.

Vanessa Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. E5–6582 Filed 11–25–05; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Notice of Submission for OMB Review; Final Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final notice of submission for OMB review.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission gives notice that it has submitted the information collection described below to the Office of Management and Budget.

DATES: Written comments on this notice must be submitted on or before December 28, 2005.

ADDRESSES: Comments on this notice must be submitted to Carolyn Lovett, Policy Analyst, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503,

e-mail *Carolyn_Lovett@omb.eop.gov.* Comments also should be submitted to Stephen Llewellyn, Acting Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. The Acting Executive Officer will accept comments transmitted by facsmile (''FAX'') machine. The telephone number for the FAX receiver is (202) 663–4114. (This is not a toll-free-number). Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 633–4070 (voice) or (202) 663–4074 (TDD). (These are not toll-free-telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street, NW., Room 922, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TDD); or Carol Miaskoff, Assistant Legal Counsel, 1801 L Street, NW., Washington, DC 20507; (202) 663–4637 (voice) or (202) 663–7026 (TDD).

SUPPLEMENTARY INFORMATION:

Introduction

With this Notice, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it is submitting to the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act of 1995 (PRA), final revisions to the Employer Information Report (EEO–1), after consultation with the Department of Labor, Office of Federal Contract Compliance Programs (OFCCP). The EEOC published the initial PRA Notice on June 11, 2003. *See* Agency Information Collection Activities: Revision of the Employer Information Report (EEO–1), 68 FR 34965, June 11, 2003.[1] In the initial notice, the EEOC proposed changes to the ethnic and racial categories on the EEO–1 report, and also to the job categories. Thirty-two interested parties submitted written comments, including employers, civil rights organizations, human resources and information technology professionals, and other individuals. Nine witnesses, representing some of the same parties, testified at the Commission's public hearing held on October 29, 2003, pursuant to section 709(c) of Title VII of the Civil Rights Act of 1964. The record was completed by several written comments submitted subsequent to the hearing.

History and Uses of the EEO–1

The EEOC and OFCCP, acting as the Joint Reporting committee, adopted the EEO–1 report in 1966 to collect annual data from many private employers and federal contractors about their minority and female workforce. *See* 42 U.S.C 2000e–8(c).[2] The agencies planned to use these EEO–1 data to analyze patterns of employment discrimination and to support civil rights enforcement. *See* U.S. Equal Employment Opportunity commission, ''A History of the EEOC, 1965–1984.'' Both agencies have used the data for enforcement.[3] OFCCP uses EEO–1 data to determine which employer facilities to select for compliance evaluations. The EEOC also uses EEO–1 data to analyze trends in female and minority employment within companies, industries, regions, and sectors of the economy. *See, e.g.,* ''Women of Color: Their Employment in the Private Sector'' (July 2003) at *http://www.eeoc.gov/stats/reports/womenofcolor.*

The government's commitment to collecting and analyzing these workforce data is a concrete demonstration of its ongoing commitment to full enforcement of Title VII of the Civil Rights Act of 1964. The importance of EEO–1 data in describing the workforce in terms of the job placement of minorities and women was a constant factor in the consideration of these revisions.

As explained in its June 11, 2003 Notice, the Commission initiated this revision in light of several developments, including the revised 1997 government-wide standards for reporting race and ethnicity, *see infra* note 5.

Race and Ethnic Categories

In reaching final decisions on race and ethnic categories for the revised EEO–1 report, the EEOC was guided by the need to balance three competing interests: Obtaining data that will support the EEOC and OFCCP in enforcing Title VII and Executive Order 11246; modernizing the EEO–1 to accommodate changing demographics and the government-wide Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity;[4] and limiting the burden on employers. The goal of the Commission was, of curse, to find the appropriate balance among these competing factors.

The race and ethnic categories proposed in the EEOC's June 11, 2003 Notice differ from the current EEO–1 in several respects. The revisions proposed in the June 11, 2003 Notice were as follows: (i) Add a new racial category titled ''Two or more races''; (ii) separate ''Asians'' from ''Pacific Islanders''; (iii) rename ''Black'' as ''Black or African American''; (iv) rename ''Hispanic'' as ''Hispanic or Latino''; and (v) strongly encourage employers to use self-reporting rather than visual identification. The public comments to the June 11, 2003 Notice primarily focused on the Commission's strong endorsement of employee self-identification; on its adoption of the new racial category, ''Two or more races''; and on the guidance for counting and reporting the number of Hispanic or Latino employees.

Self-Identification

The June 11, 2003 Notice proposed that employers gather data needed to complete the revised EEO–1 report by asking employees to voluntarily report their ethnicity and race. In the past, employers usually determined ethnicity and race for the EEO–1 by visual observation. The Commission's proposal meant that, for the first time, employers would be strongly encouraged to rely on employee self-identification to identify their ethnicity and race.

A few public commenters were concerned about potential employee discomfort with racial and ethnic self-identification, and one public commenter questioned the legality of self-identification under Title VII of the Civil Rights Act of 1964, as amended, (Title VII) and Executive Order 11246, as amended. *See* Written Comments of Affirmative Action Consulting; Written Comments of Associated Industries of the Inland Northwest. On practical grounds, an employer group raised the question of whether self-identification would be required if it were not ''feasible'' for employers. The Equal Employment Advisory Council (EEAC) maintained that employers should be permitted to continue determining race and ethnicity by visual observation if an

[1] The proposed EEO–1 Report form and the June 11, 2003 Notice can be found at: *http://www.eeoc.gov/eeo1.*

[2] *See http://www.eeoc.gov/eeo1survey/whomustfile.html* (who must file EEO–1).

[3] *See* Testimony of Wade Henderson of the Leadership Conference on Civil Rights (stating that courts, private parties, and employers also have found EEO–1 data useful).

[4] Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 FR 58782, October 30, 1997 (hereinafter ''Revised Standards'' or ''1997 Revised Standards'').

employee declined to self-identify *or* in other undefined situations in which it was ''unduly burdensome or otherwise not practical or feasible'' to extend an invitation to self-identify. *See* Written Testimony for Hearing of Jeffrey A. Norris of EEAC.

The Commission reaffirms its position that self-identification is the preferred method for gathering ethnic and racial information for the EEO–1 Report. Self-identification is key to the government's goal of understanding the increasing complexity of race in America. In the 1990s, OMB recognized that a new Federal system for reporting racial and ethnic data would need to reflect the increasing diversity of the Nation's population due to growth in immigration and interracial marriage. *See* Standards for the Classification of Federal Data and Race and Ethnicity, 59 FR 29831, June 9, 1994. The Revised Standards issued by OMB in 1997 called for the enumeration of individuals with a multiracial background in federal reports and stated that self-identification was preferred. *See* Revised Standards, *supra* note 5.[5] The Commission agrees that self-identification is necessary when Federal reports enumerate the racial and ethnic backgrounds of individuals.

The Commission also is convinced that self-identification for the EEO–1 report will not undermine civil rights. Self-identification for EEO–1 purposes is subject to safeguards, as described below. Legally, self-identification does not alter any of the fundamental legal standards of Title VII and Executive Order 11246, which prohibit unlawful employment discrimination on the basis of race and ethnicity, among other bases. Employers are prohibited from using race or ethnic information to make any employment decisions that would violate Title VII and Executive Order 11246.

Employers may use employment records or visual observation to gather race and ethnic data for EEO–1 purposes only when employees decline to self-identify.

New Race Category: Two or More Races

In its June 11, 2003 proposal, the Commission said that the EEO–1 report would require reporting of data about the number of employees who identify with. ''Two or more races,'' but would not require reporting of the different races with which these employees identify.

Some employers conditionally supported the ''Two or more races'' category on the EEO–1, while also expressing concern about burden and inaccurate data. The Chamber of Commerce conditionally supported the ''Two or more races'' category based on coordination with OFCCP's programs under Executive Order 11246. *See* Written Comments on the Chamber of Commerce. The Society for Human Resources Management (SHRM), however, argued that the Commission's proposal would yield misleading data, because the numbers for specific races would be reduced due to the subtraction of those who identified as ''Two or more races,'' whereas the number of Hispanics or Latinos would not be reduced in this way. *See* Testimony of Cornelia Gamlem on behalf of SHRM; Written of SHRM. Based on concerns about burden, some employer representatives proposed retaining the EEO–1's current format of single race reporting. *See* Written Comments of Bank One; Written Comments of Jackson and Associate Consulting; Written Comments of Avista Corporation. Other employer groups simply argued against detailed reporting schemes for multiple races. *See e.g.,* Testimony of Jeffrey Norris of EEAC; Written Comments of EEAC; Testimony of H. Juanita M. Beecher of ORC Worldwide; Written Comments on ORC Worldwide. Finally, in light of the potential burden, one commenter questioned the utility of the category for ''Two or more races,'' noting that only a small number of individuals who are currently in the workforce self-identify with multiple races, based on 200 Census Data. *See* Testimony of Christopher Northup.

By contrast, civil rights groups urged the Commission to adopt more detailed racial reporting, in the interests of civil rights enforcement and full compliance with OMB's Revised Standards. the Rainbow/PUSH Coalition, concerned about the advancement of people of color, observed that the category of ''Two or more races'' would not be meaningful for affirmative action purposes under OFCCP's authority. *See* Written Testimony for Hearing of Rev. Jesse L. Jackson, Jr., of the Rainbow/PUSH Coalition (read into Hearing Record by Mark Long). The Mexican American Legal Defense and Educational Fund (MALDEF) emphasized the importance for EEO purposes of reporting full racial data about Hispanic or Latino employees and stated that the EEOC could use OMB guidance to allocate data about individuals with multiracial backgrounds into single groups as necessary. *See* Testimony of Marisa J. Demeo of MALDEF; Written Comments of MALDEF.

The Commission adopts the ''Two or more races'' category for the final EEO–1. Detailed reporting in separate racial combinations would, at the current time, result only in a marginal enhancement of the utility of EEO–1 data for EEOC enforcement purposes. In the 2000 Census, 2.4% of respondents reported that they were in a category that would qualify as ''Two or more races.'' *See* Testimony of Christopher Northup. The 2.4% itself, includes several unique racial combinations; separate reporting for each racial combination would result in even smaller numbers for each one, depending on region. This marginal enhancement of EEO–O1 data does not justify, at the current time, the added burden for employers and for the government of detailed data collection and reporting. EEO–1 data about employees of ''Two or more races'' will be useful to the Commission to analyze national employment trends.

Another central factor in the adoption of ''Two or more races'' is that it supports OFCCP's use of EEO–1 data. OFCCP's statistical model for selecting contractors for compliance reviews, which is designed to target employer facilities with the highest likelihood of systemic discrimination, uses aggregated ''minority'' and ''nonminority'' categories based on EEO–1 data. OFCCP's targeting system requires that EEO–1 data be reported in a format that can be easily folded into this analysis. Adoption of the ''Two or more races'' category will allow OFCCP to count this new category as ''minority'' and to continue using the current methodology with minor adjustments.

The Commission intends, however, to turn to its own database of Title VII charges to identify and study those charges in which employment discrimination on the basis of more than one race is alleged. For example, the EEOC can determine the number of charges filed on the basis of more than one race, and also identify the most common racial combinations on which discrimination charges are filed, as well as the types of discrimination most often alleged by individuals with these multiracial backgrounds. When considered in conjunction with the revised EEO–1 data on ''Two or More Races,'' such analysis of the EEOC's

[5] *See also* Standards for the Classification of Federal Data on Race and Ethnicity, 59 FR 29831, June 9, 1994 (announcing OMB's decision to review the government-wide racial and ethnic categories and indicating that one of the general principles guiding this review would be respect for individual dignity and the corresponding need to facilitate self-identification to the greatest extent possible); Standards for the Classification of Federal Data on Race and Ethnicity, 60 FR 44674, 44679 August 28, 1995 (discussing the pros and cons of self-identification).

charge database will help the Commission determine whether future changes in the EEO–1 are needed.

Reporting Racial Data for Hispanics or Latinos

The Commission's June 11, 2003 proposal did not require employers to report racial data for Hispanic or Latino employees on the revised EEO–1. In written comments and in testimony, civil rights groups urged the EEOC to change its positions and require employers to report the race of Hispanic or Latino employees. MALDEF asserted the importance of reporting full racial data about Hispanic or Latino employees. Rainbow/PUSH agreed, noting that persons of mixed heritage are more likely to face discrimination because of their African ancestry than because of the other racial or ethnic elements of their heritage. *See* Written Testimony for Hearing of Rev. Jesse L. Jackson, Sr., of the Rainbow/PUSH Coalition (read into Hearing Record by Mark Long). The National Asian Pacific American Legal Consortium (NAPALC) expressed concern that failing to report the racial breakdown of Hispanics or Latinos might artificially inflate data for Latino employees while deflating data for the racial groups. *See* Written Comments of NAPALC.

An employer group, SHRM, expressed concern that failing to report the race of Hispanics or Latinos would result in skewed EEO–1 data. SHRM proposed that all employees, including Hispanics or Latinos, be asked to report the race or ethnicity with which they *primarily* identify, and also be given the option of choosing the ''Two or more races'' category. *See* Testimony of Cornelia Gamlem on behalf of SHRM; Written Comments of SHRM.

The majority of employers, however, focused on the burden to employers of collecting, maintaining, and reporting race data about Hispanic or Latino employees (as well as detailed race data about employees who selected the ''Two or more races'' category). Several companies pointed out that such detailed reporting would require a complete and burdensome overhaul of their Human Resources Information Systems. *See* Written Comments of Lozier Corporation; Written Comments of ORC Worldwide; Written Comments of TOC (objecting to a ''mind-boggling'' number of possible combinations of data to report); Written Comments of SHRM (expressing concern about the burden of overhauling Human Resources Information Systems, in addition to its concerns about skewed data). The Chamber of Commerce endorsed the Commission's proposal for reporting ethnicity and race as a reasonable balance between governmental and private interests, based on its understanding that employers would not be required to report and analyze all ethnic and racial combinations. *See* Testimony of Kris Meade on behalf of the Chamber of Commerce. The EEAC concurred with this view. *See* Testimony of Jeffrey Norris of EEAC; Written Comments of EEAC.

The Commission reaffirms its decision not to require employers to report the race of employees who identify as Hispanic or Latino. For purposes of its own uses of EEO–1 data, the Commission notes that only a small percentage of the population 18 years of age and over chose to identify as both Hispanic and a racial minority group in Census 2000.[6] This suggests that requiring employers to report the race of Hispanic or Latino employees would not significantly improve the utility of EEO–1 data for enforcement purposes. Moreover, such detailed data could not easily be folded into OFCCP's system for targeting contractors for compliance review. Finally, some employers have testified regarding the burden of collecting data about the race of Hispanic or Latino employees.

Ultimately, on the EEO–1 report itself, ethnic and racial data are reported in the same fashion as before the revision; that is, for Hispanic or Latino employees, race data are not reported.

The Two-Question Format

There were many public comments about the Commission's June 11, 2003 proposal to use the ''two-question format'' to collect ethnic and racial data from employees for the EEO–1 report. The ''two-question format'' means that employees are first asked to report their Hispanic or Latino status and second to report the race or races they consider themselves to be.

There were several objections to the ''two-question format'' as proposed. Many commenters objected that the Commission had ''singled out'' Hispanics or Latinos for different treatment. Some commenters criticized this proposal as an effort to inflate the number of Hispanics or Latinos for political purposes. Other commenters, mostly representatives of the Human Resources field, expressed concern about how to explain the two-question format to employees. Finally, after the October 2003 public hearing, employer groups urged the Commission to keep a ''combined'' format for the EEO–1, so that employers would only need to ask one question of employees: With which race/ethnicity do you *primarily* identify? *See* Supplemental Submissions of National Industry Liaison Group, ORC Worldwide, and EEAC. *See also* Revised Standards, 62 FR 58789 (discussing ''combined'' format).

The Commission retains the two-question format because it has been shown to yield more accurate data about Hispanics or Latinos. This approach is part of a longstanding Federal effort to obtain accurate ethnic data. In 1976, in response to an apparent under-count of Americans of Spanish origin or descent in the 1970 Census, Congress passed Pub. L. 94–311 calling for the collection, analysis, and publication of federal statistics on persons of Spanish origin or descent. OMB issued the ''Race and Ethnic Standards for Federal Statistics and Administrative Reporting'' shortly thereafter, adding Hispanic ethnicity to Federal reports and encouraging separate reporting of race and ethnicity.[7] In a further effort to enhance accuracy, OMB's 1997 Revised Standards recommended that Federal forms ask two questions: the first about ethnicity; and the second about race. This decision stemmed, in part, from research sponsored by the Bureau of Labor Statistics showing that significantly more people appropriately identified as Hispanic or Latino when they were asked separately about Hispanic or Latino origin.[8] The Commission's decision to adopt a two-question format is part of this ongoing effort to design federal reports that yield a more accurate count of Hispanics or Latinos.[9]

[6] The Commission also notes that there is uncertainty about whether Hispanics or Latinos willingly or accurately self-identify using American racial categories, when given the opportunity to do so. *See Overview of Race and Hispanic Origin: Census 2000 Brief,* March 2001, page 10; *see also*, Mireya Navarro, *Going beyond Black and White, Hispanics in Census Pick 'Other'*, The New York Times, November 9, 2003, § 1 (New York Region), at 1.

[7] Statistical Policy Directive No. 15, ''Race and Ethnic Standards for Federal Statistics and Administrative Reporting,'' 43 FR 19269, May 4, 1978.

[8] *See* Recommendations from the Interagency Committee for the Review of the Racial and Ethnic Standards to the Office of Management and Budget Concerning Changes to the Standards for Classifications of Federal Data on Race and Ethnicity, 62 FR 36874, July 9, 1997 (Recommendations from the Interagency Committee) Appendix 2, Chapter 4.7.

[9] *See* Standards for Classification of Federal Data on Race and Ethnicity, 60 FR 44674, August 28, 1995, at 44678–44679; *see also* Recommendations from the Interagency Committee, Appendix 2, Chapter 4 (detailing various effects and data quality concerns stemming from the use of combined and/or separate questions on race and Hispanic origin).

Data Collection: Suggested Questionnaire

The EEOC's ''Suggested Employee Questionnaire on Race and Ethnicity'' generated extensive public comment. Several employer groups observed that the instructions for the questionnaire strongly encouraged employees to provide multiple race data in much more detail than the proposed EEO–1 required it to be reported. In the opinion of these groups, the lack of consistency between the suggested questionnaire and the revised EEO–1 race and ethnic categories could foster employee mistrust and prove to be administratively burdensome for employers. *See, e.g.,* Written Comments of EEAC; Written Comments of ORC Worldwide. Specifically, employers focused on language in the Suggested Questionnaire that first provided two separate questions for workers to self-identify their ethnicity and their race, but then informed the employees who marked ''Yes'' to the Hispanic question that their race would not be reported to the government. Other commenters, however, made the point that employers may need to collect data about the race of Hispanic or Latino employees for research or statistical purposes or to defend against potential EEO claims. *See, e.g.,* Written Comments of Chamber of Commerce (noting that many Chamber members commented that race information for Hispanic or Latino individuals would be beneficial for purposes of conducting voluntary internal analyses of their workforce and/or addressing potential allegations of discrimination).

Employer groups made several other suggestions about language, for example, urging the Commission to emphasize the voluntary nature of the questionnaire. However, one employer group urged the Commission to make the questionnaire a mandatory government form, like the I–9.[10] *See* Supplemental Submission of ORC Worldwide.

In response to these comments, the Commission will not adopt the ''Suggested Employee Questionnaire on Race and Ethnicity.'' Employers must, at a minimum, have the data that are necessary to complete the EEO–1 report, which lists employee ethnicity or race in a total of seven categories. The Commission notes that some employers may find it necessary for research or statistical purposes, or for self-monitoring, to collect more detailed data than needed to complete the EEO–1 report. We commend such efforts.

As to the method for collecting data, the basic principles for ethnic and racial self-identification for purposes of the EEO–1 report are:

1. Offer employees the opportunity to self-identify;

2. Provide a statement about the voluntary nature of this inquiry for employees. For example, language such as the following may be used (employers may adapt this language).

The employer is subject to certain governmental recordkeeping and reporting requirements for the administration of civil rights laws and regulations. In order to comply with these laws, the employer invites employees to voluntarily self-identify their race and ethnicity. Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. The information will be kept confidential and will only be used in accordance with the provisions of applicable laws, executive orders, and regulations, including those that require the information to be summarized and reported to the federal government for civil rights enforcement. When reported, data will not identify any specific individual.

Job Categories

The public comments and testimony about the proposed job categories focused on three main issues: Subdividing Officials and Managers into hierarchical subcategories; renumbering job categories so that Service Workers appeared earlier on the list; and adding minor, new language to the definitions of Professionals and Technicians.

Subdividing Officials and Managers

The Commission's June 11, 2003 proposal divided Officials and Managers into three hierarchical subcategories to gather data about the progress of women and minorities in management. The proposed subcategories, based on responsibility, general lines of reporting, and skill, were: Executive/Senior Level Officials and Managers (formulate policies and set strategies); Mid Level Officials and Managers (lead major business units in implementing Executives' strategies); and First Level Officials and Managers (implement policies in daily operations and report to the Mid Level Managers).

Some employer groups opposed the proposal as burdensome and unproductive. For example, the Chamber of Commerce wrote that organizations with more than three levels of management ''will undoubtedly struggle with the appropriate placement for their 'mid-level' management,'' resulting in discrepant placement for managers who do the same functions for different companies. Although the Chamber favored keeping a single category for Officials and Managers, it urged the Commission to consider two levels of management (Senior and Other) as an alternative. The EEAC urged retention of the status quo, arguing that the new subcategories would yield numbers that would be too small to support meaningful statistical analysis for each establishment.

Other employer groups supported this aspect of the proposal. SHRM noted that it would result in data ''permit[ing] both the government and employers a better analysis of progress or lack thereof in glass ceiling [11] initiatives.'' *See* Written Comments of SHRM. The National Industry Liaison Group (NILG) wrote that this proposal would enhance affirmative action and diversity planning and also allow ''for a more precise analysis of EEO–1 trend data.'' *See* Written Comments of NILG. ORC Worldwide testified that ''many ORC members already report their officials and managers in this manner so the subdivision [would] not [be] seen as an additional burden.'' (Referring to OFCCP's Corporate Management Review). *See* Written Testimony for Hearing of H. Juanita M. Beecher of ORC Worldwide.

Civil rights groups supported this change. The National Partnership for Women & Families and the Women Employed Institute observed that the proposed EEO-1 would report basic data reflecting major differences in job content, wage rates and opportunities without unfairly burdening employers. *See* Written Comments of National Partnership for Women & Families and Women Employed Institute. NAPALC agreed that more detailed management data were necessary to remedy employment discrimination affecting Asians, especially given studies showing that Asians and Pacific Islanders are not enjoying upward mobility in the workforce commensurate with their high levels of education. *See* Written Comments of NAPALC. Finally, the Leadership Conference on Civil Rights, joined by MALDEF, commended the proposal as an opportunity to correct the overly broad categorization of ''Officials and Managers'' and to obtain data about racial and gender stratification

[10] U.S. employers are responsible for completion and retention of Form I–9, Employment Verification Eligibility Form, for each individual they hire for employment in the United State, including citizens and noncitizens. On the form, the employer must verify the employment eligibility and identity documents presented by the employee and record the document information.

[11] ''Glass ceiling'' is a term used to describe the discriminatory, artificial barriers that hinder the advancement of women and minorities to upper level job positions.

occurring at or above the ''glass ceiling.'' *See* Testimony of Wade Henderson of the Leadership Conference on Civil Rights; Testimony of Marisa J. Demeo of MALDEF.

The Commission continues to believe that a single category for all officials and managers is no longer acceptable. It conflates data about jobs of widely discrepant responsibility, compensation and skill, and thereby risks obscuring important trends in the employment of women and minorities. The proposal to subdivide this category is therefore consistent with increased interest in glass ceiling issues in recent years. The Commission recognizes, however, that employer groups raised legitimate concerns about the likelihood of inconsistent categorization of middle level managers who perform the same functions at different companies. We therefore adopt two subcategories of Officials and Managers: Executive/Senior Level Officials and Managers; and First/Mid Level Officials and Managers. The EEO-1 Instruction Booklet includes a ''Description of Job Categories'' which provides significantly more detailed descriptions of the two tiers of officials and managers. These descriptions, reproduced below, should be helpful to employers in assigning official and manager positions to the appropriate subcategory:

Executive/Senior Level Officials and Managers. Individuals who plan, direct and formulate policies, set strategy and provide the overall direction of enterprises/organizations for the development and delivery of products and services, within the parameters approved by boards of directors or other governing bodies. Residing in the highest levels of organizations, these executives plan, direct, or coordinate activities with the support of subordinate executives and staff managers. They include, in larger organizations, those individuals with two reporting levels of the CEO, whose responsibilities require frequent interaction with the CEO. Examples of these kinds of managers are: Chief executive officers, chief operating officers, chief financial officers, line of business heads, presidents or executive vice presidents of functional areas or operating groups, chief information officers, chief human resources officers, chief marketing officers, chief legal officers, management directors and managing partners.

First/Mid Level Officials and Managers. Individuals who serve as officials and managers, other than those who serve as Executive/Senior Level Officials and Managers, including those who oversee and direct the delivery of products, services or functions at group, regional or divisional levels of organizations. These officials and managers receive directions from Executive/Senior Level management and typically lead major business units. They implement policies, programs and directives of Executive/Senior Level management through subordinate managers and within the parameters set by Executive/Senior Level management. Examples of these kinds of officials and managers are: Vice presidents and directors; group, regional or divisional controllers; treasurers; and human resources, information systems, marketing, and operations managers. The First/Mid Level Officials and Managers subcategory also includes those who report directly to middle managers. These individuals serve at functional, line of business segment or branch levels and are responsible for directing and executing the day-to-day operational objectives of enterprises/organizations, conveying the directions of higher level officials and managers to subordinate personnel and, in some instances, directly supervising the activities of exempt and non-exempt personnel. Examples of these kinds of officials and managers are: First-line managers; team managers; unit managers; operations and production managers; branch managers; administrative services managers; purchasing and transportation managers; storage and distribution managers; call center or customer service managers; technical support managers; and brand or product managers.

As employers begin the process of assigning Official and Manager positions to the appropriate subcategories, the EEOC will remain available to provide guidance concerning any particular questions that arise.

Classifying Jobs as Executive/Senior Level or First/Mid Level Officials and Managers

The Commission also recognizes that commenters have valid objections to the use of the Occupational Classification Codes (OCC or Census codes) as a basis for subdividing Officials and Managers. *See, e.g.,* Testimony of Cornelia B. Gamlem on behalf of SHRM; Testimony of H. Juanita M. Beecher of ORC Worldwide; Written Comments of EEAC. After revisiting this issue, the Commission agrees that Census codes should not be used to subdivide Officials and Managers. The census codes emphasize skill and training, regardless of level of responsibility, whereas the EEO–1 job categories—especially the management subcategories—emphasize differences in responsibility and influence. For example, in categorizing a computer and information systems manager, the Census codes would place the Chief Technology Officer at a headquarters of a large corporation (who has regular interaction with the CEO) in the same category as an IT manager at a regional office (who has little if any interaction with the CEO).

Instead of using Census codes, the Commission will categorize Officials and Managers based on their level of responsibility and influence in the organizational hierarchy, as described above. The intention is for each subcategory of Officials and Managers to include individuals with equivalent levels of influence and responsibility at different organizations, even though their titles may not always be the same. Executive/Senior Level Officials and Managers are defined as those who plan, direct and formulate policy, set strategy and provide the overall direction of enterprises/organizations. They include, in larger organizations, those individuals within two reporting levels of the CEO, whose responsibilities require frequent interaction with the CEO. First/Mid Level Managers are defined as those who direct implementation or operations within the specific parameters established by Executive/Senior Level management, as well as those who oversee implementation of day-to-day goals.

Moreover, in the past, the Officials and Managers category contained non-managerial officials with expertise in business and financial occupations. EEAC opposed the placement of these occupations within the Officials and Managers category, expressing doubt that their inclusion would improve the ability to assess the utilization of minorities and women in these activities. *See* Written Comments of EEAC. After further deliberation, EEOC concludes that in the revised ten category system, individuals in business and financial occupations should be assigned to the Professional category. Including these individuals within the Officials and Managers category makes the data on management officials less useful to EEOC in analyzing trends in mobility of minorities and women within the upper reaches of organizations.

Census Occupational Codes for Job Categories Other Than Officials and Managers

Some commenters and witnesses generalized their arguments against

using Census occupational codes to subdivide Officials and Managers to make the broader point that Census codes should not be used to classify any jobs for the EEO–1. *See, e.g.,* Testimony of H. Juanita M. Beecher of ORC Worldwide; Written Comments of ORC Worldwide; Written Comments of Bank One. Employer groups who opposed *requiring* the us of OCC codes to classify jobs, however, noted that this information was ''welcome as guidance'' from the Commission. *See* Written Testimony for Hearing of H. Juanita M. Beecher of ORC Worldwide; see also Written Comments of SHRM (recommending that the suggested Census occupational classification codes be a recommendation, but not a requirement). Consultant Christopher Northup, recognizing that the Census occupational codes had been provided to guide employers, said that the codes can be ''helpful and useful to employers'' to classify jobs in the EEO–1 job categories other than Officials and Managers. *See* Written Testimony for Hearing of Christopher Northup.

The Commission believes that the Census codes may provide useful guidance for purposes of classifying jobs for the EEO–1. The Commission will offer, as an Internet reference and resource for employers, the EEO–1 ''Job Classification Guide,'' providing guidance about the range of Census occupational Codes for each broad EEO–1 job category.

Other Job Category Issues

Commenters uniformly agreed that the proposal to renumber the EEO–1 job categories, to move Service Workers from the ninth category up to the sixth category, would not improve the quality of EEO–1 data and would only impose a burden on employers. The Commission finds the arguments persuasive and will return to the same order for EEO–1 job categories as in the previous EEO–1 reports. Additionally, although MALDEF argued in favor of formally subdividing the EEO–1 category for Service Workers into sub-groups, the Commission will retain the current structure at this time. The four subcategories mentioned in the narrative description of the Service Workers in the ''Description of Job Categories''—food, cleaning, personal, and protective—were introduced to provide clarity and not to alter the reporting category itself.

Some commenters inquired whether the changes to the descriptions for the Professionals and Technicians categories, as proposed in the initial June 11, 2003 notice, should change the way these jobs are reported on the EEO–1. These revisions reflect changing workforce dynamics as to the composition and number of occupations being measured but do not change reporting. For example, new jobs have been created (such as emergency medical technician) and other jobs have changed drastically (such as computer programmer). Similarly, many jobs with qualifications which, three decades ago, could be obtained through experience, now require specific educational attainment, especially those with scientific and technical components. Because the Commission is cognizant that the qualifications of certain jobs within the Professionals and Technicians categories can still be met through experience, however, that possibility is maintained in the revised descriptions.

There is one alteration to the operating requirements that affects the Processional category. Individuals in business and financial occupations, previously reported in the Officials and Managers category, are assigned to the Professional category in the revised ten category system.

Establishments in the State of Hawaii

In response to the June 11, 2003 proposal, one commenter requested that EEOC clarify EEO–1 reporting requirements for establishments in Hawaii. *See* Written Comments of Automatic Data Processing, Inc (ADP). Under the prior EEO–1 report, establishments located in Hawaii were not required to report the race/ethnicity of employees, but were instead permitted to report employment data by gender alone. This exemption was spelled out in Section D of the prior EEO–1 Instruction Booklet. The proposed revised EEO–1 Instruction Booklet, issued in conjunction with the June 11, 2003 proposal and available on the Commission's website at *http://www.eeoc.gov/eeo1/newinstructionbooklet.html*, removes this exemption. The final revised Instruction Booklet, as adopted by the Commission, does not exempt establishments located in Hawaii. Therefore, employers will need to complete the revised EEO–1, reporting the gender, race and ethnicity of employees in each of the new job categories, for establishments located in Hawaii.

Effective Date of the Revised Form

The revised form will become effective with the 2007 EEO–1 reporting deadline. At the hearing, employer representatives made persuasive arguments about the need for lead time in terms of budgeting, implementing and training personnel in order to submit the revised EEO–1 Report. *See* Response of Jeffrey Norris of EEAC to Question from Commissioner Miller. Additionally, the EEOC is now processing EEO–1 data internally and itself needs time to transition to the new format.

Resurveying the Workforce

In an effort to minimize burden for employers during this transitional period, the Commission will not mandate that employers resurvey their workforce before submitting the first EEO–1 form in the new format. Employers should keep in mind, however, that opportunities to further resurvey without additional burden should be utilized as much and as soon as possible, for example, using routine updates of employees' personal information to obtain updated EEO–1 data. Employers also should seek self-identification of new employees under the new ethnic and racial categories as soon as possible. When covered employers start to report race and ethnic information using this new format for establishments in Hawaii, they will report ''Asians'' separately from ''Native Hawaiians or Other Pacific Islanders''.

PRA Burden Discussion

Burden hours are made up of two components. First is the aggregate number of hours required to report the annual EEO–1 data. Second is a one-time estimate of total hours required for employers to implement the revised EEO–1.

The Commission received several comments on its original estimate of respondent burden. Almost all the comments pertained to the estimate of the one-time burden associated with the proposed changes. Commenters believed that the Commission's estimates were too low.

Annual Burden Calculation

The Commission's estimate of the annual reporting hours for the proposed form used as a baseline the long-established burden hours for the current EEO–1 report, or 402,700 hours. *See infra.* The revised estimate of burden for the new EEO–1 form was calculated based on the increase in the size of the new form over the old one. In terms of matrix cells, the revised form has 1.5 times as many cells as the old one. Thus, as a first step in the calculation, the new annual burden was estimated to be about 50% higher than the current burden, or 599,000 hours.

The EEOC introduced on-line filing with the 2003 EEO–1 submission. Preliminary reporting statistics show

that more than 80% of reporting employers are filing on-line. An EEO–1 form filed on-line is estimated to take no more than one hour to complete, as compared to five hours for a paper form. Taking the proportion of on-line filers into account, it could be argued that the annual burden of the revised form is actually less than the estimated 599,000 hours.

One-Time Implementation Burden

The EEOC estimated that this on-time implementation nationwide would collectively take 572,000 hours. The Commission is estimating 3.4 hours per EEO–1 report, based on historical EEO–1 processing statistics and the Commission's own in-house estimate of the time needed to implement these revisions. The Commission recognizes that larger employers would have a larger time investment. For instance, the largest employer in the EEO–1 file has almost 4,000 establishments, and thus files the equivalent of over 4,000 EEO–1 forms. At 3.4 hours per form, the estimate for this employer to implement the new EEO–1 is over 13,000 staff hours. By contrast, for the over 14,000 employers who file one EEO–1 form each year, it would only take 3.4 hours each to implement the changes.

Overview of This Information Collection

Collection Title: Employer Information Report (EEO–1).

OMB Number: OMB Number 3046–0007.

Frequency of Report: Annual.

Type of Respondent: Private industry employers with 100 or more employees and certain federal government contractors and first-tier subcontractors with 50 or more employees.

Description of Affected Public: Private industry employers with 100 or more employees and certain federal government contractors and first tier subcontractors with 50 or more employees. The burden hours are translated into cost by multiplying the burden hours by the estimated average salary of a human resources, training, or labor relations specialist, the type of person who would most likely complete the annual EEO–1 form.

	Current	Revised
Annual Reporting Hours	402,700	599,000
Annual Respondent Cost	[1] $7.7	[1] $11.4
Federal Cost	[1] $1.3	[1] $2.1
Number of Forms	1	1

[1] Million.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–8(c)), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations set forth in the Code of Federal Regulations, Title 29, Chapter XIV, subpart B, § 1602.7 Employers in the private sector with 100 or more employees and some federal contractors with 50 or more employees have been required to submit EEO–1 reports annually since 1966. The individual reports are confidential. The EEO–1 data are used by the EEOC to investigate charges of employment discrimination against employers in private industry and to provide information about the employment status of minorities and women. The data are shared with the Office of Federal Contract Compliance Programs (OFCCP), Department of Labor, and several other federal agencies. Pursuant to section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–1 data are also shared with eight-six State and loyal Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the annual EEO–1 report survey is 45,000 private employers. The estimated average number of establishment-based responses per reporting company is between 3 and 4 EEO–1 reports annually. The annual number of responses is approximately 170,000. The revised form is estimated to impose 599,000 burden hours annually. It is also estimated that the total implementation burden for the revision for all reporters will be about 572,000 hours or about $10.9 million.[12] In order to help reduce survey burden, respondents are encouraged to report data electronically whenever possible.

EEO–1 Data on Race and Ethnicity

Revised Race and Ethnic Category Definitions

Table 1 below compares the current EEO–1 race/ethnic categories in the first column, as they have appeared on the EEO–1 since 1977, with the revised EEO–1 categories in the second column. Definitions of the revised EEO–1 ethnicity and race categories are in accordance with the 1997 revised standards and are as follows:

Ethnicity

Hispanic or Latino—A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

Race

White—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Black or African American—A person having origins in any of the Black racial groups of Africa.

Native Hawaiian or Other Pacific Islander—A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Asian—a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

American Indian or Alaska Native—A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

Two or More Races—All persons who identify with more than one of the above five races.

[12] This estimate already factors in the cost to covered employers of completing the entire revised EEO–1 for establishments located in Hawaii, which, as noted above, includes for the first time reporting the race and ethnicity of employees. Because this additional cost is relatively minor, it was not excluded from burden estimates for previous EEO–1 reports.

TABLE 1.—CURRENT AND REVISED RACE AND ETHNIC CATEGORIES

Current EEO–1—(Answer for both male and female)	Revised EEO–1—(Answer for both male and female)
Hispanic	Hispanic or Latino—(This category includes all employees who answer—YES—to the question—are you Hispanic or Latino? Report in the appropriate categories below all employees who answer—NO—to the question—are you Hispanic or Latino?
White—(Not of Hispanic origin)	White—(Not Hispanic or Latino).
Black—(Not of Hispanic origin)	Black or African American—(Not Hispanic or Latino).
Asian or Pacific Islander	Native Hawaiian or Other Pacific Islander—(Not Hispanic or Latino). Asian—(Not Hispanic or Latino).
American Indian or Alaskan Native	American Indian or Alaska Native—(Not Hispanic or Latino). Two or More Races—(Not Hispanic or Latino).

Race and Ethnicity Reporting Instructions on the Revised EEO–1

Race and Ethnic Identification

Self-identification is the preferred method of identifying the race and ethnic information necessary for the EEO–1 report. Employers are strongly encouraged to use self-identification to complete the EEO–1 report. If an employee declines to self-identify, employment records or observer identification may be used.

As to the method for collecting data, the basic principles for ethnic and racial self-identification for purposes of the EEO–1 report are:

1. Offer employees the opportunity to self-identify;

2. Provide a statement about the voluntary nature of this inquiry for employees. For example, language such as the following may be used (employers may adapt this language):

The employer is subject to certain governmental recordkeeping and reporting requirements for the administration of civil rights laws and regulations. In order to comply with these laws, the employer invites employees to voluntarily self-identify their race and ethnicity. Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. The information will be kept confidential and will only be used in accordance with the provisions of applicable laws, executive orders, and regulations, including those that require the information to be summarized and reported to the federal government for civil rights enforcement. When reported, data will not identify any specific individual.

EEO–1 Job Category Data

Table 2 compares the current and the revised EEO–1 job categories:

TABLE 2.—CURRENT AND REVISED EEO–1 JOB CATEGORIES

Current EEO–1	Revised EEO–1
1. Officials and Managers.	1.1 Executive/Senior Level Officials and Managers. 1.2 First/Mid Level Officials and Managers.
2. Professionals	2. Professionals.
3. Technicians	3. Technicians.
4. Sales Workers	4. Sales Workers.
5. Office and Clerical	5. Administrative Support Workers.
6. Craft Workers (Skilled).	6. Craft Workers.
7. Operatives (Semi-skilled).	7. Operatives.
8. Laborers (Unskilled).	8. Laborers and Helpers.
9. Service Workers	9. Service Workers.

Description of Revised EEO–1 Job Categories

The revised EEO–1 job categories are listed below, including a brief description of the skills and training required for occupations in that category and examples of the jobs that fit each category. These job categories are primarily based on average skill levels, knowledge, and responsibility involved in each occupation within the job category. They are not industry based. The examples presented below are illustrative and not intended to be exhaustive of all job titles in a job category.

The Officials and Managers category as a whole is to be divided into the following two subcategories: Executive/Senior Level Officials and Managers and Fist/Mid Level Officials and Managers. These subcategories are intended to mirror the employer's own well-established hierarchy of management positions. The subcategories will allow assessment of the extent to which minorities and women have access to power and decision making jobs in the employer's workforce. Small employers who may not have two well-defined hierarchical steps of management should report their management employees in the appropriate category.

Executive/Senior Level Officials and Managers. Individuals who plan, direct and formulate policies, set strategy and provide the overall direction of enterprises/organizations for the development and delivery of products and services, within the parameters approved by boards of directors of other governing bodies. Residing in the highest levels of organizations, these executive plan, direct, or coordinate activities with the support of subordinate executives and staff managers. They include, in larger organizations, those individuals within two reporting levels of the CEO, whose responsibilities require frequent interaction with the CEO. Examples of these kinds of managers are: Chief executive officers, chief operating officers, chief financial officers, line of business heads, presidents or executive vice presidents of functional areas or operating groups, chief information officers, chief human resources officers, chief marketing officers, chief legal officers, management directors and managing partners.

First/Mid Level Officials and Managers. Individuals who serve as managers, other than those who serve as Executive/Senior Level Officials and Managers, including those who oversee and direct the delivery of products, services or functions at group, regional or divisional levels of organizations. These managers receive directions from Executive/Senior Level management and typically lead major business units. They implement policies, programs and directives of Executive/Senior Level management through subordinate managers and within the parameters set by Executives/Senior Level management. Examples of these kinds of managers are: Vice presidents and directors; group, regional or divisional controllers; treasurers; and human resources, information systems, marketing, and operations managers. The First/Mid Level Officials and

Managers subcategory also includes those who report directly to middle managers. These individuals serve at functional, line of business segment or branch levels and are responsible for directing and executing the day-to-day operational objectives of enterprises/organizations, conveying the directions of higher level officials and managers to subordinate personnel and, in some instances, directly supervising the activities of exempt and non-exempt personnel. Examples of these kinds of managers are: First-line managers; team managers; unit managers; operations and production managers; branch managers; administrative services managers; purchasing and transportation managers; storage and distribution managers; call center or customer service managers; technical support managers; and brand or product managers.

Professionals. Most jobs in this category require bachelor and graduate degrees, and/or professional certification. In some instances, comparable experience may establish a person's qualifications. Examples of these kinds of positions include: Accountants and auditors; airplane pilots and flight engineers; architects; artists; chemists; computer programmers; designers; dieticians; editors; engineers; lawyers; librarians; mathematical scientists; natural scientists; registered nurses; physical scientists; physicians and surgeons; social scientists; teachers; and surveyors.

Technicians. Jobs in this category include activities that require applied scientific skills, usually obtained by post-secondary education of varying lengths, depending on the particular occupation, recognizing that in some instances additional training, certification, or comparable experience is required. Examples of these types of positions include: Drafters; emergency medical technicians; chemical technicians; and broadcast and sound engineering technicians.

Sales Workers. These jobs include non-managerial activities that wholly and primarily involve direct sales. Examples of these types of positions include: Advertising sales agents; insurance sales agents; real estate brokers and sales agents; wholesale sales representatives; securities, commodities, and financial services sales agents; telemarketers; demonstrators; retail salespersons; counter and rental clerks; and cashiers.

Administrative Support Workers (formerly Office and Clerical). These jobs involve non-managerial tasks providing administrative and support assistance, primarily in office settings. Examples of these types of positions include: Office and administrative support workers; bookkeeping, accounting and auditing clerks; cargo and freight agents; dispatchers; couriers; data entry keyers; computer operators; shipping, receiving and traffic clerks; word processors and typists; proofreaders; desktop publishers; and general office clerks.

Craft Workers (formerly Craft Workers (Skilled)). Most lobes in this category include higher skilled occupations in construction (building trades craft workers and their formal apprentices) and natural resource extraction workers. Examples of these types of positions include: Boilermakers; brick and stone masons; carpenters; electricians; painters (both construction and maintenance); glaziers; pipelayers, plumbers, pipefitters and steamfitters; plasterers; roofers; elevator installers; earth drillers; derrick operations; oil and gas rotary drill operators; and blasters and explosive workers. This category includes occupations related to the installation, maintenance and part replacement of equipment, machines and tools, such as: Automotive mechanics; aircraft mechanics; and electric and electronic equipment repairers. This category also includes some production occupations that are distinguished by the high degree of skill and precision required to perform them, based on clearly defined task specifications, such as: millwrights; etchers and engravers; tool and die makers; and pattern makers.

Operatives (formerly Operatives (Semi-skilled)). Most jobs in this category include intermediate skilled occupations and include workers who operate machines or factor-related processing equipment. Most of these occupations do not usually require more than several months of training. Examples include: Textile machine operators; laundry and dry cleaning workers; photographic process workers; weaving machine operators; electrical and electronic equipment assemblers; semiconductor processors; testers, graders and sorters; bakers; and butchers and other meat, poultry and fish processing workers. This category also includes occupations of generally intermediate skill levels that are concerned with operating and controlling equipment to facilitate the movement of people or materials, such as: Bridge and lock tenders; truck, bus or taxi drivers; industrial truck and tractor (forklift) operators; parking lot attendants; sailors; conveyor operations; and hand packers and packagers.

Laborers and Helpers (formerly Laborers (Unskilled)). Jobs in this category include workers with more limited skills who require only brief training to perform tasks that require little or no independent judgment. Examples include: Production and construction worker helpers; vehicle and equipment cleaners; laborers; freight, stock and material movers; service station attendants; construction laborers; refuse and recyclable materials collectors; septic tank servicers; and sewer pipe cleaners.

Service Workers. Jobs in this category include food service, cleaning service, personal service, and protective service activities. Skill may be acquired through formal training, job-related training or direct experience. Examples of food service positions include: Cooks; bartenders; and other food service workers. Examples of personal service positions include: Medical assistants and other healthcare support occupations; hairdressers; ushers; and transportation attendants. Examples of cleaning service positions include: cleaners; janitors; and porters. Examples of protective service positions include: Transit and railroad police and fire fighters; guards; private detectives and investigators.

As employers begin the process of assigning their employees to the revised ten category system, the EEOC will remain available to provide guidance concerning questions that arise.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 05–23359 Filed 11–25–05; 8:45am]

BILLING CODE 6570–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

* * * * *

DATE AND TIME: *Thursday, December 1, 2005, at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and approval of minutes.

Final rules and explanation and justification for state party committees paying salaries of employees who spend under 25% of their compensated time on federal elections.

Routine administrative matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 05–23413 Filed 11–23–05; 11:22 am]

BILLING CODE 6715–01–M

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 *http://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 December 22, 2005.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Oregon Coast Bancshares, Inc., Newport, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of Oregon Coast Bank, Newport, Oregon.

Board of Governors of the Federal Reserve System, November 21, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6525 Filed 11–25–05; 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 December 22, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. Liberty Shares, Inc., Hinesville, Georgia; to acquire 100 percent of the outstanding shares of Peoples Banking Corporation, and thereby indirectly acquire Peoples Bank, both of Blackshear, Georgia.

Board of Governors of the Federal Reserve System, November 22, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6571 Filed 11–25–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 12, 2005.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Bank Hapoalim B.M., Tel Aviv, Israel; Arison Holdings (1998) Ltd., Tel Aviv, Israel; and Israel Salt Industries Ltd., Atlit, Israel; to acquire Investec USA, New York, New York, and thereby engage in financial and investment advisory activities, pursuant to section 225.28(b)(6); agency transactional services for customer investments, pursuant to section 225.28(b)(7); and investment transactions as principal, pursuant to section 225.28(b)(8) of Regulation Y.

Board of Governors of the Federal Reserve System, November 21, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–6524 Filed 11–25–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0129; 60-day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection 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.

Type of Information Collection Request: Regular Clearance, Extension of a currently approved collection.

Title of Information Collection: HHS Acquisition Regulation HHSAR Part 370, Special Programs Affecting Acquisition.

Form/OMB No.: OS–0990–0129.

Use: This request for clearance covers the requirement of the Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities clause. It is the policy at the Health and Human Services, as a result of a Secretarial initiative, that all meetings, conferences, and seminar sites be accessible to individuals with disabilities.

Frequency: Recordkeeping, Reporting, on occasion.

Affected Public: Business or other for-profit, not-for-profit institutions, and Federal government.

Annual Number of Respondents: 1,242.

Total Annual Responses: 1,420.

Average Burden Per Response: 2 hours.

Total Annual Hours: 10,556.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received with 60-days, and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–0129), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: November 9, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E5–6532 Filed 11–25–05; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0130; 60-day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection 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.

Type of Information Collection Request: Regular Clearance, Extension of a currently approved collection.

Title of Information Collection: HHS Acquisition Regulation HHSAR Part 352, Solicitation Provisions and Contract Clauses.

Form/OMB No.: OS–0990–0130.

Use: This request for clearance covers the Key Personnel clause in HHSAR 352.270–5. This clause requires contractors to obtain approval before substituting key personnel which are specified in the contract.

Frequency: Reporting, on occasion.

Affected Public: Business or other for-profit, not-for-profit institutions, and Federal government.

Annual Number of Respondents: 1,921.

Total Annual Responses: 1,921.

Average Burden per Response: 8 hours.

Total Annual Hours: 3,842.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received with 60-days, and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–0130), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: November 9, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E5–6533 Filed 10–25–05; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0131; 60-day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection 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.

Type of Information Collection Request: Regular Clearance, Extension of a currently approved collection.

Title of Information Collection: HHS Acquisition Regulation HHSAR Part 342 Contract Administration.

Form/OMB No.: OS–0990–0131.

Use: This request for clearance covers the requirement at Health and Human Services Acquisition Regulation (HHSAR) 342.7101 regarding notification required of contractors when a cost overrun is anticipated. The information is necessary to determine the factors responsible for the cost overrun as well as the detailed costs associated with it.

Frequency: Reporting, on occasion.

Affected Public: Business or other for-profit, not-for-profit institutions, Federal government and state, local, or tribal government.

Annual Number of Respondents: 110.

Total Annual Responses: 1.

Average Burden Per Response: 8 hours.

Total Annual Hours: 2,200.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received with 60-days, and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–0131), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: November 9, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E5–6534 Filed 11–25–05; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0133; 60-day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection 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.

Type of Information Collection Request: Regular Clearance, Extension of a currently approved collection.

Title of Information Collection: HHS Acquisition Regulation HHSAR Part 333, Disputes and Appeals.

Form/OMB No.: OS–0990–0133.

Use: This request for clearance covers the requirement at Health and Human Services Acquisition Regulation (HHSAR) 352.233–70, Litigation and Claims. The clause provides that contractors for cost-reimbursement contracts report any proceedings before an administrative agency, filed against the contractor arising out of the performance of the contract.

Frequency: Reporting, on occasion.

Affected Public: Business or other for-profit, not-for-profit institutions, and Federal government.

Annual Number of Respondents: 80.

Total Annual Responses: 1.

Average Burden Per Response: 20 hours.

Total Annual Hours: 40.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 60 days, and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–0133), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: November 9, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E5–6535 Filed 11–25–05; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0136]

60-Day Notice; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is

publishing the following summary of a proposed collection 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.

Type of Information Collection Request: Regular Clearance, Extension of a currently approved collection.

Title of Information Collection: HHS Acquisition Regulation HHSAR Part 324, Protection of Privacy and Freedom of Information.

Form/OMB No.: OS–0990–0136.

Use: This request for clearance covers the reporting requirements for the Confidentiality of Information Clause at Health and Human Services Acquisition Regulation (HHSAR) 35.224–70. This requirement is used to protect personal interest of individuals, corporate interests of non-governmental organizations, and the capacity of the Government to provide public services when information from or about individuals, organizations, or Federal agencies is provided to or obtained by contractors in performance of Departmental contracts.

Frequency: Recordkeeping, Reporting, on occasion.

Affected Public: Business or other for-profit, not-for-profit institutions, and Federal government.

Annual Number of Respondents: 430.

Total Annual Responses: 430.

Average Burden Per Response: 30 minutes.

Total Annual Hours: 3,440.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received with 60-days, and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–0136), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: November 9, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E5–6536 Filed 11–25–05; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–4040–0005; 30-day notice]

Grants.gov Program Management Office Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, Grants.gov Program Management Office, HHS.

Notice of Proposed Requirement To Establish Government-Wide Standard Data Elements for Use By All Federal Grant Making Agencies—SF–424 Individual

In compliance with the requirement of the Paperwork Reduction Act of 1995, the Grants.gov Program Management Office, one of the 26 E-Government initiatives, managed by the Department of Health and Human Services is publishing the following summary of proposed collection for public comment. Interested individuals are invited to send comments regarding any 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.

Type of Information Collection Request: Regular.

Title of Information Collection: SF–424 Individual.

Form/OMB No.: OS–4040–0005.

Use: On September 1, 2005, the Grants.gov Program Management Office, one of the 26 E-Government initiatives, managed by HHS, published the proposed SF–424 Application for Federal Assistance, Individual (SF–424 I) collection for public comment in the **Federal Register** (70 FR 169). Interested individuals were invited to send comments regarding any aspect of this collection of information. No comments were received.

The SF–424 (I) is the government-wide data set and application cover page for use by Federal grant-making agencies that award grants to individuals. The SF–424 (I) is currently available for use as part of the electronic application process of Grants.gov, which was deployed in October 2003 and is part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107). The standard data set replaces numerous agency data sets and reduces the administrative burden placed on the grants community. Federal agencies are not required to collect all of the information included in the proposed data set. The agency will identify the data that must be provided by applicants through instructions that will accompany the application package.

The Grants.gov office has revised the application cover page to indicate that SSN is optional and adding the following statement, ''Disclosure of SSN is voluntary. Please see the application package instructions for the agency's authority and routine uses of the data''. Grants.gov, in consultation with other agencies, are investigating options for a unique identifier other than SSN. Grants.gov plans to address this condition through its newly formed Agency User Group.

The estimate of the total burden of the collection information has been updated based on the Paperwork Reduction Act Worksheets (OMB 83–C) received from the agencies. Currently, five agencies plan to use the SF–424 (I) instead of the SF–424 for eligible grant programs. Collectively, the agencies plan to receive 6,949 applications annually and estimate that it takes applicants 25 minutes on average to complete each application. Cumulatively, these organizations report the total burden to applicants to be 2,863 hours.

Frequency: Recordkeeping, Reporting, on occasion.

Affected: Individuals.

Total Annual Respondents: 5,827.

Total Annual Responses: 6,949.

Average Burden Per Response: 25 minutes.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your

request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the Desk Officer at the address below:

OMB Desk Officer: Katherine Astrich, OMB Human Resources and Housing Branch, Attention: (OMB #0990–0005), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 16, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E5–6564 Filed 11–25–05; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–4040–0003; 30-day notice]

Grants.gov Program Management Office; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, Grants.gov Program Management Office, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Grants.gov Program Management Office, one of the 26 E-Government initiatives, managed by the Department of Health and Human Services is publishing the following summary of proposed collection for public comment. Interested individuals are invited to send comments regarding any aspect of this collection of information 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.

Type of Information Collection Request: Regular.

Title of Information Collection: SF–424 Short Organizational.

Form/OMB No.: OS–4040–0003.

Use: On March 24, 2005, the Grants.gov Program Management Office, one of the 26 E-Government initiatives, managed by HHS, published the proposed SF–424 Short Organizational (Short) collection for public comment in the **Federal Register** (70 FR 15089). Interested individuals were invited to send comments regarding any aspect of this collection of information. This notice indicates request for extension of OMB clearance for the SF–424 (Short), and also responds to comments received on the March 24, 2005, **Federal Register** notice.

The SF–424 (short) is a simplified, alternative government-wide data set and application cover page for use by Federal grant-making agencies. Agencies may use the SF–424 (Short) for grant programs not requiring all the data that is required on the SF–424 core data set and form. This information collection request also includes two additional government-wide forms, the Key Contacts form and the Project Abstract form, each of which can be used in conjunction with the SF–424 to collect supplemental applicant data. The Key Contacts form is an optional form that the agencies may use to collect additional key contact or point of contact information. The Project Abstract form is also an optional form that provides the mechanism for the applicant to attach a file that contains an abstract of the project, in a format specified by the agency.

The SF–424 (Short) and supplemental data set and forms are currently available for use as part of the electronic application process of Grants.gov, which was deployed in October 2003 and is part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107). The standard data set replaces numerous agency data sets and reduces the administrative burden placed on the grants community. Federal agencies are not required to collect all of the information included in the proposed data set. The agency will identify the data that must be provided by applicants through instructions that will accompany the application package.

Comments sent to OMB by the public, questioned the need to collect the Social Security Number (SSN) for the Project Director and/or the Primary Contact/Grants Administrator. Grants.gov responded to this comment by revising the application cover page to indicate that SSN is optional and adding the following statement, ''Disclosure of SSN is voluntary. Please see the application package instructions for the agency's authority and routine uses of the data''. In addition, OMB has also requested that Grants.gov, in consultation with other agencies, investigate options for a unique identifier other than SSN. Grants.gov plans to address this condition through its newly formed Agency User Group.

The estimate of the total burden of the collection information has been updated based on the Paperwork Reduction Act Worksheets (OMB 83-C) received from the agencies. Currently, six agencies plan to use the SF–424 (Short) in lieu of the SF–424 for eligible grant programs. Collectively, the agencies plan to receive 8,549 applications annually and estimate that it takes applicants 25 minutes on average to complete each application. Cumulatively, these organizations report the total burden to applicants to be 3,652 hours.

Frequency: Recordkeeping, Reporting, on occasion.

Affected: Federal, State, Local and Tribal governments; farms; non-profit institutions, and other for-profit.

Total Annual Respondents: 8,276.

Total Annual Responses: 8,549.

Average Burden Per Response: 25 minutes.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB 4040–0003), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 16, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E5–6568 Filed 11–25–05; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New; 30-day Notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#1 Type of Information Collection Request: New Collection, Regular.

Title of Information Collection: National Community Centers of Excellence in Women's Health and National Centers of Excellence in Women's Health Joint Project Evaluation Professional Survey.

Form/OMB No.: OS–0990–New.

Use: Health professionals and community leaders who participated in a joint project program will complete a survey sharing their perceptions of the program's impact on their work. This will help evaluate the processes and outcomes of the joint projects and their ability to provide integrated services to women.

Frequency: Other, once per person.

Affected Public: Individuals or households.

Annual Number of Respondents: 170.

Total Annual Responses: 170.

Average Burden Per Response: 15-minutes.

Total Annual Hours: 43.

#2 Type of Information Collection Request: New Collection, Regular.

Title of Information Collection: National Community Centers of Excellence in Women's Health (CCOE) and National Centers of Excellence in Women's Health (CoE) Joint Project Evaluation Participant Survey.

Form/OMB No.: OS–0990–New.

Use: Women (patient/community members) who particpated in a joint project program will complete a survey sharing their perceptions of the program's impact on their knowledge or health. This will help evaluate the processes and outcomes of the joint projects and their ability to provide integrated services to women. The Office of Women's Health will use the results to improve the joint project model, help set funding priorities, and explore whether expansion or bridging of the CoE/CCOE programs is warranted.

Frequency: Other, once per person.

Affected Public: Individuals or households.

Annual Number of Respondents: 390.

Total Annual Responses: 390.

Average Burden Per Response: 15-minutes.

Total Annual Hours: 98.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–New), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 17, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E5–6569 Filed 11–25–05; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0271]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), 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.

Type of Information Collection Request: Extension of Currently Approved Collection.

Title of Information Collection: Data Collection for the Identification of Comparison Groups for the National Evaluation of the National Community Centers of Excellence in Women's Health (CCOE) Program.

Form/OMB No.: OS–0990–0271.

Use: The Office on Women's Health (OWH) is seeking a new clearance to conduct a Women's Health Comparison Study Participate Survey and a Community Centers of Excellence (CCOEs) Comparison Study Leadership Survey. The surveys will assess how well organizations that have CCOEs as compared to organizations that do not have CCOEs—coordinate quality health care services and information for women. The results of this survey will help determine sucesses and opportunities for improvement in women's health.

Frequency: Recordkeeping, Reporting on occasion.

Affected Public: State, local, or tribal governments, Federal government, not-for-profit institutions.

Annual Number of Respondents: 4,010.

Total Annual Responses: 4,010.

Average Burden per Response: 30 minutes.

Total Annual Hours: 1,005.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed

within 30 days of this notice directly to the Desk Officer at the address below:

OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–0271), New Executive Office Building, Room 10235, Washington, DC 20503.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E5–6570 Filed 11–25–05; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–216]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period from July through September 2005. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL) and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: William Cibulas, Jr., PhD., Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 498–0007.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on September 7, 2005 [70 FR 53197]. This announcement is the responsibility of ATSDR under the regulation ''Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities'' [42 CFR part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1825 Century Boulevard, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. Public health assessments are often available for public review at local repositories such as libraries. Many public health assessments are available through ATSDR's Web site at *http://www.atsdr.cdc.gov/HAC/PHA/*. In addition, the completed public health assessments are available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (800) 553–6847. NTIS charges for copies of public health assessments. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assessments Completed or Issued

Between July 1, 2005, and September 30, 2005, public health assessments were issued for the following sites:

NPL and Proposed NPL Sites

California

AMCO Chemical Company—(PB2005–100692)

Casmalia Resources Superfund Site—(PB2005–110706)

Concord Naval Weapons Station (a/k/a Naval Weapons Station Seal Beach Detachment Concord)—(PB2005–108881)

Florida

Naval Air Station (NAS) Jacksonville—(PB2005–107543)

Indiana

Conrail Rail Yard—(PB2005–109457)

Maryland

Central Chemical Site—(PB2005–109382)

Massachusetts

Naval Weapons Industrial Reserve Plant Bedford—(PB2005–109459)

Puerto Rico

Cidra Groundwater—(PB2005–110011)

Pesticide Warehouse III—(PB2005–110012)

Washington

Bremerton Naval Complex Including Puget Sound Naval Shipyard—(PB2005–110668)

Non-NPL Petitioned Sites

Alabama

Redstone Army Garrison/Marshall Space Flight Center—(PB2005–107565)

District of Columbia

River Terrace Community—(PB2005–108882)

Illinois

Asarco, Incorporated—(PB2005–107579)

New Jersey

Cedar Brook Area Groundwater Contamination—(PB2005–107580)

Pennsylvania

Bear Creek Chemical Area—(PB2005–108987)

Tennessee

Jersey Miniere Zinc Company (a/k/a Pasminco Clarksville Zinc Plant)—(PB2005–109383)

Dated: November 17, 2005.

Kenneth Rose,

Acting Director, Office of Policy, Planning, and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. E5–6584 Filed 11–25–05; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee on Childhood Lead Poisoning Prevention, Centers for Disease Control and Prevention of the Department of Health and Human Services, has been renewed for a 2-year period extending through October 31, 2007.

For further information, contact Mary Jean Brown, R.N., Sc.D., Executive Secretary, Advisory Committee on Childhood Lead Poisoning Prevention, Centers for Disease Control and Prevention of the Department of Health and Human Services, 4470 Buford Highway, M/S F40 Atlanta, Georgia 30441.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee

management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Diseases Registry.

Dated: November 17, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–23370 Filed 11–25–05; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Infectious Diseases: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, National Center for Infectious Diseases, Centers for Disease Control and Prevention of the Department of Health and Human Services, has been renewed for a 2-year period extending through October 31, 2007.

For further information, contact Rima Khabbaz, Executive Secretary, Board of Scientific Counselors, National Center for Infectious Diseases, Centers for Disease Control and Prevention of the Department of Health and Human Services, 1600 Clifton Road, M/S C2, Atlanta, Georgia 30303.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other Committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 17, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E5–6587 Filed 11–25–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Methodology for Determining If an Increase in a State's Child Poverty Rate Is the Result of TANF.

OMB No.: 0970–0186.

Description: In accordance with Section 413(i) of the Social Security Act and 45 CFR part 284, the Department of Health and Human Services (HHS) intends to reinstate the following information collection requirements. For instances when Census Bureau data show that a State's child poverty rate increased by 5 percent or more from one year to the next, a State may submit independent estimates of its child poverty rate. If HHS determines that the State's independent estimates are not more reliable than the Census Bureau estimates, HHS will require the State to submit an assessment of the impact of the TANF program(s) in the State on the child poverty rate. If HHS determines from the assessment and other information that the child poverty rate in the State increased as a result of the TANF program(s) in the State, HHS will then require the State to submit a corrective action plan.

Respondents: The respondents are the 50 States and District of Columbia; when reliable Census Bureau data become available for the Territories, additional respondents might include Guam, Puerto Rico and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument or requirement	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Optional Submission of Data on Child Poverty from an Independent Source	54	1	8	432
Assessment of the Impact of TANF on the Increase in Child Poverty	54	1	120	6,480
Corrective Action Plan	54	1	160	8,640

Estimated Total Annual Burden Hours: 15,552.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20477, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: November 21, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–23357 Filed 11–25–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee for People With Intellectual Disabilities: Notice of Meeting

AGENCY: President's Committee for People with Intellectual Disabilities (PCPID), ACF, HHS.

ACTION: Notice of meeting.

DATES: The meeting will be held on Thursday, December 8, 2005, from 3 p.m. to 5 p.m. Daylight Savings Time.

ADDRESSES: The conference all may be accessed by dialing, U.S. toll-free 1-888-950-8038, and the passcode ''December 05'' on the date and time indicated. You

may participate in the call in person with staff by reporting to the Aerospace Center Office Building, 901 D Street, SW., Office of Public Affairs Conference Room, 7th Floor West, Washington, DC, no later than 2:45 p.m., Daylight Savings Time. Please bear in mind that space is limited.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2) notice is hereby given that the President's Committee for People with Intellectual Disabilities will hold its third quarterly meeting by telephone conference call to discuss items related to people with intellectual disabilities. The conference call will be open to the public to listen, with call-ins limited to the number of telephone lines available. Individuals who plan to call in and need special assistance, such as TTY, assistive listening devices, or materials in alternative format, should inform Ericka Alston, Executive Assistant, President's Committee for People with Intellectual Disabilities, Telephone—202–619–0634, Fax—202–205–9519, E-mail: *ealston@acf.hhs.gov*, no later than November 30, 2005. Efforts will be made to meet special requests received after that date, but availability of special needs accommodations to respond to these requests cannot be guaranteed. This notice is being published less than 15 days prior to the conference call due to scheduling problems.

Agenda: The Committee plans to discuss the Social Security Administration's proposed amendments to the Ticket to Work and Self-Sufficiency Program, the Employer Work Incentive Act for Individuals with Severe Disabilities and an update on the Medicaid Commission. The Honorable Martin H. Gerry, Deputy Commissioner, Disability and Income Security Programs, Social Security Administration, and John D. Kemp, attorney and advocate for people with disabilities, will be guest speakers.

FOR FURTHER INFORMATION CONTACT: Contact Sally Atwater, Executive Director, President's Committee for People with Intellectual Disabilities, Aerospace Center Office Building, Suite 701, 901 D Street, SW., Washington, DC 20447, Telephone—(202) 619–0634, Fax—(202) 205–9519, E-mail: *satwater@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services on a broad range of topics relating to programs, services and supports for persons with intellectual disabilities. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs, services and supports for persons with intellectual disabilities, and for reviewing legislative proposals that impact the quality of life experienced by citizens with intellectual disabilities and their families.

Dated: November 15, 2005.

Lena Stone,

Program Analyst, President's Committee for People with Intellectual Disabilities.

[FR Doc. 05–23314 Filed 11–25–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Draft OIG Compliance Program Guidance for Recipients of PHS Research Awards

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice and comment period.

SUMMARY: This **Federal Register** notice seeks the comments of interested parties on draft compliance guidance developed by the Office of Inspector General (OIG) for recipients of extramural research awards from the National Institutes of Health (NIH) and other agencies of the U.S. Public Health Service (PHS). Through this notice, OIG is setting forth its general views on the value and fundamental principles of compliance programs for colleges and universities and other recipients of PHS awards for biomedical and behavioral research and the specific elements that these award recipients should consider when developing and implementing an effective compliance program.

DATES: To assure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on December 28, 2005.

ADDRESSES: Please mail or deliver written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–1026–CPG, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

We do not accept comments by facsimile (FAX) transmissions. In commenting, please refer to file code OIG–1026–CPG. Comments received timely will be available for public inspection as they are received, generally beginning approximately 2 weeks after publication of a document, in Room 5527 of the Office of Inspector General at 330 Independence Avenue, SW., Washington, DC 20201 on Monday through Friday of each week from 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Richard B. Stern, Office of Counsel to the Inspector General, (202) 619–0335, or Joel Schaer, Office of External Affairs, (202) 619–0089.

SUPPLEMENTARY INFORMATION:

Background

Compliance program guidance (CPG) is a major OIG initiative that was developed to assist the health care community in preventing and reducing fraud and abuse in Federal programs. In the last several years, OIG has developed and issued compliance program guidance directed at the following segments of the health care industry: clinical laboratories; hospitals; home health agencies; third-party medical billing companies; durable medical equipment, prosthetics, orthotics and supply companies; Medicare+Choice organizations offering coordinated care plans; hospices; nursing facilities; individual and small group physician practices; ambulance suppliers; and pharmaceutical manufacturers. Copies of these CPGs can be found on the OIG Web site at *http://oig.hhs.gov/fraud/complianceguidance.html.*

Under its governing statute, OIG's oversight responsibility extends to all programs and operations of the Department of Health and Human Services (HHS or Department) and, accordingly, OIG promotes compliance efforts by all recipients of Department funds.[1] One community of paramount importance to the Department's public health efforts is that of colleges, universities, and other recipients of public funds that conduct biomedical and behavioral research. These institutions may have organizational differences from the users of past compliance guidances, but we believe they have the same basic need to promote compliance measures. We understand that research institutions have been developing compliance programs in increasing numbers.

[1] OIG and the PHS agencies, including NIH, share responsibility for encouraging compliance by recipients of research awards. In distinguishing the roles of the two agencies, we note that NIH is more focused on compliance with administrative, scientific, and financial requirements, while OIG is more focused on the avoidance of fraudulent activities. OIG has chosen to publish this guidance, in close coordination with NIH and other PHS agencies, as part of a larger initiative that is designed in part to assist institutions in avoiding criminal and civil fraud investigations. This compliance guidance is consistent with guidance provided by NIH on its Web site, *http://grants1.nih.gov/grants/oer.htm.*

Moreover, over the last several years slightly more than 50 percent of recipients of NIH research awards have been medical schools, many of which may already have health care compliance programs in their affiliated hospitals.

As with OIG's earlier CPGs, the purpose of this draft guidance is to encourage the use of internal controls to effectively monitor adherence to applicable statutes, regulations, and program requirements. In developing the guidance, we have focused specifically on grant compliance and administration issues, i.e., whether recipients of research awards have misused program funds under the statutes, regulations, and other requirements governing the use of those funds. We believe this focus is consistent with OIG's responsibility for the identification of program overpayments and, in appropriate situations, the investigation of civil or criminal fraud. However, we believe that the principles set forth in the guidance will also assist institutions in developing compliance programs for their other activities wherein issues of program compliance arise.

This draft guidance for recipients of PHS research awards contains seven elements that have been widely recognized as fundamental to an effective compliance program, and an additional element—number 8 below—that we believe is especially important for research institutions. The eight elements include:

1. Implementing written policies and procedures,
2. Designating a compliance officer and compliance committee,
3. Conducting effective training and education,
4. Developing effective lines of communication,
5. Conducting internal monitoring and auditing,
6. Enforcing standards through well-publicized disciplinary guidelines,
7. Responding promptly to detected problems and undertaking corrective action, and
8. Defining roles and responsibilities and assigning oversight responsibility.

As with previously issued guidances, this draft CPG represents OIG's suggestions regarding how institutions can establish internal controls to ensure adherence to applicable rules and program requirements. The contents of the guidance should not be viewed as mandatory or as an exclusive discussion of the advisable elements of a compliance program. Moreover, the guidance does not establish a set of program rules or standards by which to evaluate the compliance of an institution. Rather, it is merely a set of suggestions regarding how institutions may establish internal controls to allow the institution to better comply with rules and standards that apply to PHS extramural research awards.

Developing This Draft Compliance Program Guidance

In developing this draft guidance, we have consulted closely with NIH, which dispenses the majority of biomedical and behavioral research awards within HHS, and have coordinated as well as with other PHS agencies that have compliance responsibilities for biomedical and behavioral research awards. The statutes, regulations, and policies pertaining to NIH and other PHS awards constitute an appropriate focus for award recipients who seek to establish an effective compliance program. We have also consulted with the U.S. Department of Justice and with OIGs of other agencies—such as the National Science Foundation—that fund significant extramural research.

In an effort to receive initial input on this guidance from the research community, we published a **Federal Register** notice on September 5, 2003, (68 FR 52783), ''Solicitation of Information and Recommendations for Developing Compliance Program Guidance for Recipients of NIH Research Grants.'' In response to that notice, we received a total of 20 comments from research institutions, associations, and from one individual.

Although the September 5, 2003, solicitation notice requested information and recommendations for developing a CPG for recipients of research awards only from NIH, we have expanded the scope of the guidance to other biomedical and behavioral research awards from the public health agencies of this Department. In part, we made this change based on a comment, received in response to the solicitation, that we avoid inconsistent sets of guidance from various agencies. In addition to NIH, which awards the majority of HHS (and Federal) research awards, other public health agencies that fund biomedical and behavioral research include the Agency for Healthcare Research and Quality, the Agency for Toxic Substances and Disease Registry, the Health Resources and Services Administration, the Indian Health Service, the Centers for Disease Control and Prevention, the Substance Abuse and Mental Health Services Administration, and the Food and Drug Administration.

In an effort to ensure that all parties have an opportunity to provide input into OIG's guidance, we are publishing this guidance in draft form. We welcome any comments regarding this document from interested parties. OIG will consider all comments that are received within the above-cited timeframe, incorporate any specific recommendations as appropriate, and then prepare a final version of the guidance for publication in the **Federal Register** The final version of the guidance will be available on the OIG Web site at *http://oig.hhs.gov.*

Draft OIG Compliance Program Guidance for Recipients of PHS Research Awards (November 2005)

I. Introduction

The Office of Inspector General (OIG) of the Department of Health and Human Services (HHS or Department) is continuing in its efforts to promote voluntary compliance programs for recipients of Department funding. This is the first guidance that is designed for a segment of the Federal grant community and that is not specifically focused on Medicare and Medicaid issues.[2] However, many recipients of Public Health Service (PHS) research awards are familiar with our previous compliance guidances, in part because among the largest recipients of PHS research funds are academic medical centers, which were the focus of one of our first compliance guidances, to the hospital industry, in February 1998.[3]

As with the earlier guidances, this compliance guidance is intended to assist recipients of PHS biomedical and behavioral research awards in developing and implementing internal controls and procedures that promote adherence to applicable statutes, regulations, and other requirements of PHS programs. This compliance guidance follows closely those earlier guidances in its format and basic elements. At the same time, this guidance departs from those earlier publications in certain areas to accommodate the many differences for recipients of extramural research awards.

[2] Although we refer in this guidance to commonly used terms such as grant community and grant compliance and administration, the guidance is intended to apply more broadly to all PHS research ''awards,'' which includes cooperative agreements and certain contracts that are not governed by Federal procurement laws and regulations. For a definition of the term ''awards,'' see 45 CFR part 74, Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations,'' § 74.2 (''Definitions'').

[3] That guidance was recently supplemented. *See* OIG Supplemental Compliance Program Guidance for Hospitals, 70 FR 4858 (January 31, 2005).

As with hospitals and other health care companies, an increasing number of colleges, universities, and other recipients of PHS biomedical and behavioral research funds have developed compliance programs. One purpose of this guidance is to assist these institutions in evaluating and, as necessary, refining existing compliance programs.

This guidance is not a compliance program itself, nor does it establish a set of cost principles or program requirements, which would be beyond the responsibility of OIG. This guidance does not establish criteria by which to conduct an audit or review of regulatory or program compliance. Rather, it is intended to serve as a set of guidelines that recipients of extramural research awards may consider when developing and implementing a compliance program or evaluating an existing one. For those institutions with an existing compliance program, this guidance may serve as a useful comparison against which to measure ongoing efforts.

We recognize that there are recipients of biomedical and behavioral research awards that may be small institutions or businesses, such as those receiving funds under the Small Business Innovation Research (SBIR) program, or that may be larger institutions that receive a relatively small amount of PHS funding. We anticipate that these institutions share with larger entities the same basic concern about establishing effective internal controls to monitor adherence with Federal program requirements. However, some of these institutions may determine that it is not practicable to establish the same type of comprehensive compliance program that may exist, for example, at an academic research institution associated with a medical school. We encourage these institutions to develop a compliance program that relies on the same eight basic elements of the guidance, but that is suited to their own size and needs.

A. Scope of the Compliance Program Guidance

Because the responsibilities of OIG are focused on the effective operation of this Department's programs and the misuse of its funds, the scope of this voluntary guidance concentrates on issues that fall under the rubric of grant compliance and administration. By this, we mean those issues involving the application of statutes, regulations, and other program requirements that affect the ''allowability'' of costs and whether awardees should be subjected to a disallowance action or, in appropriate circumstances, an investigation for criminal or civil fraud. This guidance is also focused specifically on PHS awards from this Department. We recognize that institutions may have multiple sources of funding and that the term ''compliance'' is used more broadly by the research community to include areas such as human and animal subject research, conflicts of interest, research misconduct, and intellectual property issues. While this guidance is not focused on these other award sources and these other regulatory areas, the compliance elements presented by this guidance may be useful in connection with other sources of funding and with regard to other regulatory areas. For example, appointing a compliance officer and committee, developing a code of conduct, and instituting a training and education program would contribute to promoting compliance with National Science Foundation award requirements, as well as requirements related to research misconduct and human subject research.

Institutions may currently have, or be considering, separate compliance systems for their various areas of regulated activity. We recognize that each of these areas may involve distinct personnel and present different regulatory frameworks. However, because the basic elements for a compliance program are shared among these systems, institutions may receive management efficiencies by integrating their compliance efforts through the elimination of overlapping systems or by developing a single compliance program covering all compliance areas. Integrating compliance systems may also offer collateral benefits. For example, audits and reviews of one area of compliance may develop information useful to other areas.

OIG also recognizes that a body of literature already exists on research compliance issues, including guidance on establishing a compliance program. Nonetheless, we believe that providing OIG CPG consistent with the other compliance guidances we have published is appropriate. For the convenience of the reader, we have compiled a bibliography of some of these other publications, which is attached to this guidance as Appendix A.

Our experience with compliance programs is that an institution's implementation of a serious, meaningful, and effective compliance program may require a significant commitment of time and resources, especially for those institutions that have not developed a compliance program in the past. We believe, however, that this commitment is justified by the benefits of a compliance program.

B. Benefits of a Compliance Program

While the decision to implement a compliance program is entirely voluntary, OIG believes that an effective compliance program provides numerous advantages that will inure to the benefit of institutions that choose to establish one. An effective compliance program addresses the Government's and research community's mutual goals of ensuring good stewardship of Federal funds by eliminating erroneous or improper expenditure of Federal research funds, improving administration of grants (both from the Federal Government and from private sources), and demonstrating to employees and the community at large the institution's commitment to honest and responsible conduct. These goals may be achieved by:

- Identifying and correcting unlawful and unethical behavior at an early stage;
- Encouraging employees to report potential problems and allowing for appropriate internal inquiry and corrective action;
- Minimizing, through early detection and reporting, any financial loss to the Government and any resulting financial loss to the institution; and
- Reducing the possibility of Government audits or investigations regarding unallowable payments or fraud that could have been prevented at an early stage.

Institutions may also want to note that several of the elements of this compliance guidance are considered ''mitigating factors'' that must be considered as part of a formal debarment action by the Department.[4]

C. Application of Compliance Program Guidance

There is no single ''best'' compliance program. Institutions may take differing approaches to how they rely upon internal audits in monitoring compliance issues, how they comprise their compliance committee, and whether they include compliance for research misconduct and human and animal subject protections as part of a single compliance program. Some institutions may already have a compliance program in place; others only now may be initiating such efforts.

Institutions may also have identified, through audits or internal inquiries, particular management concerns or areas of high risk that may call for

[4] *See* 45 CFR 76.860(l), (n), (p), and (q).

developing or refining compliance elements to address these areas.

OIG has identified three major potential risk areas for recipients of NIH research awards: (1) Time and effort reporting, (2) properly allocating charges to award projects, and (3) reporting of financial support from other sources. These risk areas, although not exhaustive of all potential risk areas, are discussed in greater detail in section II below.

The compliance measures adopted by an institution should be tailored to fit the unique environment of the institution (including its organizational structure, operations and resources, as well as prior enforcement experience). In short, OIG recommends that each institution should adapt the objectives and principles underlying the measures outlined in this guidance to its own particular circumstances.

II. Risk Areas

As with previous OIG CPGs, in this section we highlight examples of risk areas to assist institutions in developing a compliance program. The identification of risk areas is an important aspect of formulating policies and procedures, developing a training and education program, and conducting internal monitoring and audits. This section addresses a few examples of risk areas for recipients of PHS research awards that have come to OIG's attention: (1) Time and effort reporting, (2) properly allocating charges to award projects, and (3) reporting of financial support from other sources. The areas identified in this section are in no way intended to be exhaustive of all potential risk areas. Institutions may identify other areas based on their own operations and experiences. As an example, subrecipient monitoring may be an important risk area for those institutions that rely heavily on their own grants and contracts to fulfill the purposes of a PHS award.

A. Time and Effort Reporting

One critical compliance issue is the accurate reporting of research time and effort. Because the compensation for the personal services of researchers—both direct salary and fringe benefits—is typically a major cost of a project, it is critical that the portion of the researcher's compensation for particular research projects be accurately reported. One reason that we view time and effort reporting as a critical risk area is that many researchers have multiple responsibilities—sometimes involving teaching, research, and clinical work—that must be accurately measured and monitored. In the course of a researcher's workday, the separation between these areas of activity can sometimes be hard to discern, which heightens the need to have effective timekeeping systems.

For this reason, institutions need to be especially vigilant in accurately reporting the percentage of time devoted to projects. Accurate time and effort reporting systems are essential to ensure that PHS and other funding sources are properly charged for the activities of researchers. The failure to maintain accurate time and effort reporting may result in overcharges to funding sources and, in certain circumstances, could subject an institution to civil or criminal fraud investigations.

We are aware of situations in which researchers falsely report the amount of time they intend to devote to research projects. For example, it would be clearly improper for researchers in award applications to separately report to three awarding agencies that they intend to spend 50 percent of their time on each of the three awards. Some recent cases we have seen involved the ''commitment of effort'' by researchers wherein the Government believed that the institution failed to account properly for the clinical practice time of researchers, in addition to their academic and research time at the institution. As an example, it would be improper to report to NIH or another awarding agency that 70 percent of a researcher's time would be spent on an award when 50 percent of the researcher's time would be spent on clinical responsibilities.

For colleges and universities, the rules governing compensation for personal services, including payroll distributions, are contained in OMB Circular A–21,[5] Cost Principles for Educational Institutions, section J.10.[6] Under section J.10 of OMB Circular A–21, institutions must establish a system of payroll distribution and must usually maintain ''after-the-fact Activity Reports'' or employ another method to report accurately the distribution of activity of employees. (*See especially*, section J.10, paragraphs b.(2)(a)—(c)). The accuracy of these activity reports is critical for the awarding agency to understand the amount of research conducted under the award. More specific guidance is contained in the instructions to PHS Form 398, Application for a Public Health Service Grant,[7] available at *www.grants.nih.gov/grants/funding/phs398/phs398.html* (''Definitions,'' definition of ''Institutional Base Salary''), and in the NIH Grants Policy Statement, Part I, Definitions, available at *http://grants1.nih.gov/grants/policy/nihgps* (''Glossary,'' definition of ''Institutional Base Salary,'' and Selected Items of Cost, ''Salaries and Wages'' and ''Payroll Distribution'').

Another issue in reporting the commitment of effort to research projects is the accurate and consistent treatment of ''institutional base salary'' (IBS). IBS effectively serves as the denominator in calculating the proportion of an employee's activity that is allocated to particular Federal awards. While IBS typically includes only nonclinical work of employees, certain institutions include clinical work based on a more expansive definition of the ''institution'' for cost reporting purposes. For those institutions, it is critical that the clinical and nonclinical work activities of researchers are reported so that salary is correctly allocated among Federal and non-Federal sources.[8]

B. Properly Allocating Charges to Award Projects

Research institutions commonly receive multiple awards for a single research area. It is essential that accounting systems properly separate the amount of funding from each funding source. Institutions must also be vigilant about clearly fraudulent practices such as principal investigators on different projects banking or trading award funds among themselves. The failure to account accurately for charges to various award projects can result in

[5] For State and local governments, the rules governing compensation for personal services is contained in OMB Circular A–87, Cost Principles for State, Local and Indian Tribal Governments, Attachment B, § 11. For non-profit organizations, it is contained in OMB Circular A–122, Cost Principles for Non-Profit Organizations, Attachment B, paragraph 7. For hospitals, the rules are contained in 45 CFR part 74, Appendix E, Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals, § IX, paragraph B.7.

[6] By regulation, OMB Circular A–21 and the other cost principles are made applicable to recipients of Department awards. 45 CFR 74.27(a). The cost principles have also recently been codified in title 2 of the CFR.

[7] The Public Health Service Grant Application, PHS Form 398, is being replaced with an electronic application form, the standard form 424 R&R. According to NIH, the new form will incorporate all the policies and definitions currently contained in the Form 398.

[8] NIH has recently expanded its guidelines addressing when institutions may include clinical practice compensation as part of institutional base salary. Among other tests, the compensation must be set by the institution, be paid through or at the direction of the institution, and be included and accounted for in the institution's effort reporting and/or payroll distribution system. *See* Guidelines for Inclusion of Clinical Practice Compensation in Institutional Base Salary Charged to NIH Grants and Contracts, *http://grants.nih.gov/grants/guide/notice-files/NOT–OD–050061.html.*

significant disallowances or, in certain circumstances, could subject an institution to criminal or civil fraud investigations.

In one recent civil fraud action, an institution settled allegations by the Government that it made end-of-year transfers of direct costs on various Federally funded research awards from overspent accounts to underspent accounts, with the purpose of maximizing its Federal reimbursement and, in some cases, avoiding the refunding of unused grant proceeds.

The general principles governing the allocation of costs are found in the appropriate sets of cost principles, such as OMB Circular A–21 for colleges and universities. Among those principles in Circular A–21 is the rule that a ''cost is allocable to a particular cost objective * * * if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received or other equitable relationship.'' Circular, § C.4.[9] Additional guidance on the allocation of costs may be found in the NIH Grants Policy Statement, Part II, Cost Considerations, available at *htttp://grants1.nih.gov/grants/policy/nihgps.* Also, the Departmental Appeals Board has jurisdiction over cost allocation and rate disputes, as well as more generally over direct, discretionary grants, including biomedical research grants from NIH. (The Board's process is described in 45 CFR part 16.) Several Board decisions address the proper allocation of costs by colleges and universities.[10]

As with other administrative requirements governing Federal awards, the improper allocation of charges to various sources is not a mere ''accounting problem,'' in the sense that it has no real impact on the conduct of science. On the contrary, the failure to allocate correctly charges—whether because of poor record-keeping or as part of an intent to deceive funding sources—has the effect of drawing away limited Federal research funds from projects for which they were intended and subverting the Government's ability to distribute funds to those projects most in need of support.

C. Reporting Financial Support From Other Sources

As with the proper reporting of time and effort and the allocation of charges, the reporting of financial support from other sources is critical for the awarding agency to understand the commitment of resources by the grantee to a particular project or award. Without complete and accurate information on other funding sources, PHS may be unable to determine whether a particular project should be funded and the amount of such funding. In some cases, failure to identify other support for a research project could cause PHS to provide duplicate funding to the project. At a minimum, information on other support would allow PHS to use its limited resources on other worthy projects that might otherwise be left unfunded.

For PHS awards, the reporting of other financial support is a required element of award applications and the failure to provide this information could, in certain, subject an institution to a criminal or civil fraud investigation. Other funding support is required to be reported as part of the application for funding (PHS Form 398), the instructions for which state that the applicant organization must disclose all compensation and salary support. (*See* PHS 398 Rev. 9/2004, § III.H (''Other Support'') available at *http://www.grants.nih.gov/grants/funding/phs398/PolAssurDef.doc.*) Moreover, the face page of the PHS application includes a certification by both the Principal Investigator/Program Director and by the Applicant Organization that all statements in the application are ''true, complete, and accurate to the best of my knowledge'' and that ''false, fictitious, or fraudulent statements or claims could subject me to criminal, civil, or administrative penalties.'' (The face page is available at *http://www.grants.nih.gov/grants/funding/phs398/fp1.doc.*) Additional guidance for NIH grants is found in the NIH Grants Policy Statement, Part II, Just-in-Time Procedures, available at *http://grants1.nih.gov/grants/policy/nihgps.*

A problem related to the failure to accurately and completely report support from other financial sources is the charging of both award funds and Medicare and other health care insurers for performing the same service. This is clearly improper and has subjected institutions to fraud investigations.

III. Compliance Program Elements

A. The Basic Compliance Elements

At a minimum, a comprehensive compliance program should include the following elements:

(1) The development and distribution of written standards of conduct, as well as written policies and procedures, that reflect the institution's commitment to compliance.

(2) The designation of a compliance officer and a compliance committee charged with the responsibility for developing, operating, and monitoring the compliance program, and with authority to report directly to the head of the organization, such as the president and/or the board of regents in the case of a university.

(3) The development and implementation of regular, effective education and training programs for all affected employees.

(4) The creation and maintenance of an effective line of communication between the compliance officer and all employees, including a process (such as a hotline or other reporting system) to receive complaints or questions that are addressed in a timely and meaningful way, and the adoption of procedures to protect the anonymity of complainants and to protect whistleblowers from retaliation.

(5) The clear definition of roles and responsibilities within the institution's organization and ensuring the effective assignment of oversight responsibilities.

(6) The use of audits and/or other risk evaluation techniques to monitor compliance and identify problem areas.

(7) The enforcement of appropriate disciplinary action against employees or contractors who have violated institutional policies, procedures, and/or applicable Federal requirements for the use of Federal research dollars, and

(8) The development of policies and procedures for the investigation of identified instances of non-compliance or misconduct. These should include directions regarding the prompt and proper response to detected offenses, such as the initiation of appropriate corrective action and preventive measures.

B. Written Policies and Procedures

In developing a compliance program, every institution should develop and distribute written policies and procedures addressing compliance with Federal award requirements. These policies and procedures should be developed under the direction and supervision of the compliance officer, the compliance committee, and relevant institution officials. They should also be

[9] For State and local governments, a similar principle governing the allocation of costs is contained in OMB Circular A–87, Cost Principles for State, Local and Indian Tribal Governments, Attachment A, § C.3. For non-profit organizations, it is contained at OMB Circular A–122, Cost Principles for Non-Profit Organizations, § A.4. For hospitals, the principle is contained in 45 CFR Part 74, Appendix E, Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals, § III, D.

[10] Board decisions may be found on the Board's Web site at *www.hhs.gov/dab/search.html*, as well as with legal information services such as Westlaw and Lexis.

reviewed at regular intervals to ensure that they are current and relevant.

At a minimum, the policies and procedures should be provided to all faculty members and other employees who are affected by them, to students who may be conducting research with Federal awards, and to any agents or contractors who may furnish services in connection with Federal research awards. The policies and procedures should be easily found and accessible, such as, for example, on the institution's Internet or intranet site. Since institutions also typically maintain policies and procedures governing other compliance issues, including conflicts of interest, human subject research, and the maintenance and reporting of research data, they may choose to compile these various policies and procedures on a single Internet or intranet site.

In addition to a clear statement of detailed and substantive policies and procedures, OIG recommends that institutions that receive PHS research awards develop a general institutional statement of ethical and compliance principles that will guide the institution's operations. One common expression of this statement of principles is the code of conduct. The code should function in the same fashion as a constitution, i.e., as a document that details the fundamental principles, values, and framework for action within an organization. The code of conduct for research institutions should articulate the institution's expectations of commitment to compliance by management, employees, and agents, and should summarize the broad ethical and legal principles under which the institutions must operate. Unlike the more detailed policies and procedures, the code of conduct should be brief and cover general principles applicable to all employees.

OIG strongly encourages the participation and involvement, as appropriate, of senior management of the institution, such as the board of regents and president, as well as other personnel from various levels of the organizational structure, in the development of all aspects of the compliance program, especially the code of conduct. Management and employee involvement in this process communicates a strong and explicit commitment by management to foster compliance with applicable program requirements. It also communicates the need for all employees to comply with the organization's code of conduct and policies and procedures.

C. Designation of a Compliance Officer and a Compliance Committee

1. Compliance Officer

Every research institution should designate a compliance officer who will have day-to-day responsibility for overseeing and coordinating the compliance program. For smaller institutions, the compliance officer responsibilities might be added to other management responsibilities, or, for very large institutions, there could be several compliance officers who would have responsibility for different major activities of the institution. However, designating a compliance officer with the appropriate level of authority is critical to the success of the program. Optimally, the officer should report directly to the institution's president and should have direct access to the board of regents or other governing body, senior administration officials, and legal counsel. For very large institutions, if it is not possible to report directly to the president, the officer should report to the provost or official with similar high-level responsibility for the oversight of research administration. The compliance officer should have sufficient funding, resources, and staff to perform his or her responsibilities fully.

The compliance officer's primary responsibilities should include:

- Overseeing and monitoring implementation of the compliance program;
- Reporting on a regular basis to the board of regents, president, and compliance committee (if applicable) on compliance matters and assisting these individuals or groups to establish methods to reduce the institution's vulnerability to fraud and abuse;
- Periodically revising the compliance program, as appropriate, to respond to changes in the institution's needs and applicable program requirements, identified weakness in the compliance program, or identified systemic patterns of noncompliance;
- Developing, coordinating, and participating in a multifaceted educational and training program that focuses on the elements of the compliance program, and seeking to ensure that all affected employees understand and comply with pertinent Federal and State standards;
- Developing policies and procedures;
- Assisting the institution's internal or independent auditors in coordinating compliance reviews and monitoring activities;
- Reviewing and, where appropriate, acting in response to reports of noncompliance received through the hotline (or other established reporting mechanism) or otherwise brought to his or her attention (e.g., as a result of an internal audit or by counsel who may have been notified of a potential instance of noncompliance);
- Independently investigating and acting on matters related to compliance. To that end, the compliance officer should have the flexibility to design and coordinate internal investigations (e.g., responding to reports of problems or suspected violations) and any resulting corrective action (e.g., making necessary improvements to policies and practices, and taking appropriate disciplinary action) with particular departments or institution activities;
- Participating with counsel in the appropriate reporting of any self-discovered violations of Federal requirements; and
- Continuing the momentum and, as appropriate, revising or expanding the compliance program after the initial years of implementation.[11]

The compliance officer must have the authority to review all documents and other information relevant to compliance activities. This review authority should enable the compliance officer to determine whether the institution is in compliance with PHS or other Federal program requirements. Where appropriate, the compliance officer should seek the advice of competent legal counsel about these matters.

2. Compliance Committee

OIG recommends that a compliance committee be established to advise the compliance officer and assist in the implementation of the compliance program.[12] If structured appropriately, the committee can provide the compliance officer with contacts in various parts of the institution and the names of individuals who possess subject matter expertise. If the

[11] There are many approaches the compliance officer may enlist to maintain the vitality of the compliance program. Periodic on-site visits of offices, bulletins with compliance updates and reminders, distribution of audiotapes, videotapes, CD ROMs, or computer notifications about different risk areas, lectures at campus meetings, and circulation of recent articles or publications discussing fraud and abuse are some examples of approaches the compliance officer may employ.

[12] The compliance committee benefits from having the perspectives of individuals with varying responsibilities and areas of knowledge in the organization, such as operations, finance, audit, human resources, and legal, as well as faculty members. The compliance officer should be an integral member of the committee. All committee members should have the requisite seniority and comprehensive experience within their respective areas to recommend and implement any necessary changes to policies and procedures.

institution employs individuals who already have responsibility for compliance in various subject areas, for example biosafety or care and use of animals, these individuals would be obvious candidates for the compliance committee.

When developing an appropriate team of people to serve as the compliance committee, the institution should also consider including individuals with a variety of skills and personality traits as team members. The institution should expect its compliance committee members and compliance officer to demonstrate integrity, good judgment, assertiveness, and an approachable demeanor, while eliciting the respect and trust of employees. These interpersonal skills are as important as the professional experience of the compliance officer and each member of the compliance committee. Examples of individuals that the institution might consider as members of the compliance committee include institutional ombudsman staff and alternative dispute resolution staff.

Once an institution chooses the members of the compliance committee, the institution needs to train these individuals on the policies and procedures of the compliance program, as well as how to discharge their duties. In essence, the compliance committee should function as an extension of the compliance officer and provide the organization with increased oversight.

D. Conducting Effective Training

The training of appropriate administrators, both at the institution and department levels, faculty (including principal investigators), other staff, and contractors on award administration and other program requirements is an important element of an effective compliance program. The focus of the training and its level of detail will depend on the particular needs of the institution. In addition to training sessions, the institution may also undertake other educational efforts, such as disseminating publications that explain specific requirements in a practical manner. In developing training programs, it may be helpful to involve faculty, such as principal investigators, who will be receiving the training. This will allow these individuals to offer their insights, encourage more enthusiastic participation in the training sessions, and promote buy-in with the compliance program.

An institution should provide general training sessions that cover such issues as ethical standards and the institution's commitment to compliance issues. All employees, and where feasible and appropriate contractors, should receive the general training. General training should include the contents of the institution's compliance program, such as the role of the compliance officer and committee and the availability of an anonymous complaint mechanism. It should include both a description of the many types of compliance issues that administrators, faculty and other employees may need to address in the course of their careers, and the sources of guidance in resolving those issues.

More specific training programs would be designed for more specialized audiences. For example, administrative personnel who manage award funding should receive detailed training on Federal cost principles and grant administration regulations and policies. Employees who are involved with clinical research should receive training on the protection of human subjects, the Institutional Review Board process, and the responsible conduct of research. Administration officers and other key staff can assist in identifying additional specialized areas for training. Areas of training may also be identified through internal audits and monitoring and from a review of any past compliance problems.

Training instructors may come from outside or inside the organization, but must be qualified to present the subject matter involved and sufficiently experienced in the issues presented to adequately field questions and coordinate discussions among those being trained. Ideally, training instructors should be available for follow-up questions after the formal training session has been conducted.

General and specific training sessions should be provided both upon initial employment with the institution as well as on some periodic schedule, depending on the needs of the audience. Specialized training should be provided on a more frequent basis, perhaps annually or more frequently.

One technique to consider for training is to report actual examples of compliance problems at the institution or at other institutions, typically without any identifying information. This may serve to educate staff on these issues the institution considers important, how the compliance process works, and the actions that can be taken against individuals for more serious problems.

An institution may wish to vary the manner of training, both for general and specific training. In-person training sessions may be more effective than other types of training and are usually important for initial training sessions for new employees or when employees have changed their job responsibilities. However, follow-up training may be provided in other formats, such as through videotaped presentations or web-based training in which participants certify that they have completed the training curriculum. If videos or computer-based programs are used for compliance training, OIG suggests that the institution make a qualified individual available to field questions from trainees.

The compliance officer should maintain records of all formal training undertaken by the institution as part of the compliance program. This should include attendance logs, descriptions of the training sessions, and copies of the material distributed at training sessions. Depending on need, an institution may require that employees receive a minimum number of educational hours per year, as appropriate, as part of their employment responsibilities.

The institution needs to establish a mechanism to ensure that employees receive the training they need. Training could be made a condition of continued employment and failure to comply with training requirements could result in disciplinary action. Adherence to the training requirements as well as other provisions of the compliance program should be a factor in the annual evaluation of each employee.

E. Developing Effective Lines of Communication

1. Access to Supervisors and/or the Compliance Officer

For a compliance program to work, employees must be able to ask questions and report problems. University officials, department chairpersons or other supervisors play a key role in responding to employee concerns and it is appropriate that they serve as a first line of communication. Research institutions should consider the adoption of open-door policies to foster dialogue between management and employees. To encourage communications, confidentiality and nonretaliation policies should also be developed and distributed to all employees.

Open lines of communication between the compliance officer and employees are equally important to the successful implementation of a compliance program. In addition to serving as a contact point for reporting problems and initiating appropriate responsive action, the compliance officer should be viewed as someone to whom personnel can go for clarification on the institution's policies.

2. Hotlines and Other Forms of Communication

OIG encourages the use of hotlines, e-mails, newsletters, suggestion boxes, and other forms of information exchange to maintain open lines of communication. In addition, an effective employee exit interview program could be designed to solicit information from departing employees regarding potential misconduct and suspected violations of the institution's policies and procedures. Institution officials may also identify areas of risk or concern through periodic surveys.

If an institution establishes a hotline or other reporting mechanism, information regarding how to access the reporting mechanism should be made readily available to all employees and contractors by including that information in the code of conduct or by circulating the information (e.g., by publishing the hotline number or e-mail address on wallet cards) or conspicuously posting the information in common work areas.[13] Employees should be permitted to report matters on an anonymous basis.

For the reporting mechanism to maintain credibility, it is important that the institution's review of the allegations be meaningful and that prompt and appropriate followup be conducted. Reported matters that suggest substantial violations of Federal program requirements should be documented and investigated promptly to determine their veracity and the scope and cause of any underlying problem. The compliance officer should maintain a thorough record of such complaints as well as any investigation, its results, and any remedial or disciplinary action taken. The institution may wish to provide such information, redacted of individual identifiers, to the institution's senior management, such as the board of regents and the president, and to the compliance committee.

F. Auditing and Monitoring

Auditing of an institution's operations and activities is a critical internal control mechanism. Under the Single Audit Act of 1984 (Pub. L. 98–502), as amended, all institutions that expend $500,000 or more in Federal assistance are required to have a single audit of the ''non-Federal entity,'' which must be conducted in accordance with generally accepted Government auditing standards. (31 U.S.C. 7502, OMB Circular A–133.) Major institutions typically also have an annual financial statement audit, often conducted by the same firm that conducts its single audit, for the purpose of expressing an opinion as to the fairness of the information contained in the financial statements for the institution.

In addition to the mandated single audit and the financial statement audit, institutions should consider having additional performance audits, focused on particular areas of activity. Internal auditors may already be performing such audits, although an external auditor may in some cases be able to provide a greater level of independence in this work or should be considered when there is a particular problem or risk area that needs attention. Whether audits of compliance with Federal program requirements are performed by internal or external auditors, they should follow generally accepted Government auditing standards, published by the Government Accountability Office as ''Government Auditing Standards,'' known as the ''Yellow Book.''

Institutions should consider conducting risk assessments to determine where to devote audit resources, such as for separate performance audits, and may wish to consider the risk areas we identified above in section II. Risk assessments could be coordinated by the compliance officer. The institution's disclosure statement under OMB Circular A–21—if it is required to submit one—may already include identification of risk areas. The A–133 audit itself may also identify risk areas or the program agencies may identify risk areas based on their review of the A–133 audit.

An effective compliance program should also incorporate thorough monitoring of its implementation and an ongoing evaluation process. The compliance officer should document this ongoing monitoring, including reports of suspected noncompliance, and provide these assessments to the institution's senior management and the compliance committee. The extent and frequency of the compliance audits may differ depending on variables such as the institution's available resources, prior history of noncompliance, and the risk factors particular to the institution. The nature of the reviews may also vary and could include a prospective systemic review of the institution's processes, protocols, and practices, or a retrospective review of actual practices in a particular area.

Although many assessment techniques are available, it is often effective to engage internal or external evaluators who have relevant expertise to perform regular compliance reviews. The reviews should focus on those divisions or departments of the institution that have substantive involvement with or impact on Federal programs and on the risk areas identified in this guidance. The reviews should also evaluate the policies and procedures regarding other areas of concern identified by OIG and Federal and State law enforcement agencies. Specifically, the reviews should evaluate whether: (1) The institution has policies covering the identified risk areas, (2) the policies were implemented and communicated, and (3) the policies were followed.

G. Enforcing Standards Through Well-Publicized Disciplinary Guidelines

An effective compliance program should include clear and specific disciplinary policies that set out the consequences of violating Federal or State requirements, the institution's code of conduct, or its policies and procedures. Any research institution should consistently undertake appropriate disciplinary action across the institution for the disciplinary policy to have the required deterrent effect. Intentional and material noncompliance should not be tolerated and should subject transgressors to significant sanctions. Such sanctions could range from oral warnings to suspension, termination or other sanctions, as appropriate. Disciplinary action also may be appropriate when a responsible employee's failure to detect a violation is attributable to his or her negligence or reckless conduct. Each situation must be considered on a case-by-case basis, taking into account all relevant factors, to determine the appropriate response.

H. Responding to Detected Problems and Developing Corrective Action Initiatives

1. Violations and Investigations

Violation of an institution's compliance program, failure to comply with applicable Federal or State law, and other types of misconduct threaten the institution's reputation in the scientific and research community. Consequently, upon receipt of reasonable indications of suspected noncompliance, it is important that the compliance officer or other officials immediately investigate the allegations to determine whether a material violation of applicable law or the requirements of the compliance program has occurred and, if so, take decisive

[13] Institutions might also choose to post in a prominent area the HHS–OIG Hotline telephone number, 1–800–447–8477 (1–800–HHS–TIPS).

steps to correct the problem.[14] The exact nature and level of thoroughness of the investigation will vary according to the circumstances, but the review should be detailed enough to identify the cause of the problem. As appropriate, the investigation may include a corrective action plan, an assessment of internal controls, a report and repayment to the Government, and/or a referral to law enforcement authorities or regulatory bodies.

2. Reporting

Where the compliance officer, compliance committee, or member of the institution's administration discovers credible evidence of misconduct from any source and, after a reasonable inquiry, believes that the conduct may violate criminal, civil, or administrative law, the institution should promptly report the existence of misconduct to the appropriate authorities within a reasonable period, but not more than 60 days, after determining that there is credible evidence of a violation. This includes the reporting of criminal or civil misconduct to Federal and State authorities,[15] or, for example, in the case of research misconduct to the appropriate institutional body or to the Department's Office of Research Integrity. Prompt voluntary reporting will demonstrate the institution's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, reporting such conduct may be considered a mitigating factor by the responsible law enforcement or regulatory office, including OIG.

When reporting to the Government, an institution should provide all information relevant to the alleged violation of applicable Federal or State law(s) and the potential financial or other impact of the alleged violation. The compliance officer, under advice of counsel and with guidance from the governmental authorities, could be requested to continue to investigate the reported violation. Once the investigation is completed, and especially if the investigation ultimately reveals that criminal, civil or administrative violations have occurred, the compliance officer should notify the appropriate authorities of the outcome of the investigation.

I. Establishing Roles and Responsibilities and Assigning Oversight Responsibility

It is especially important that roles and responsibilities regarding the use of PHS research awards be clearly defined and understood. Defining roles and responsibilities promotes accountability and is essential to the overall internal control structure of the institution.

Institutions should clearly delineate the responsibilities of all persons involved with the conduct of federally supported research, including both administration or department personnel with oversight responsibility as well as principal investigators and other personnel who are engaged in research.

Under PHS regulations, it is typically the institution itself that qualifies as the ''responsible legal entity'' for grant compliance purposes. (*See* 42 CFR 52.2 (definition of ''Grantee'').) Clearly defining roles and responsibilities can assist institutions in fulfilling their legal responsibility to comply with Department requirements, removing any uncertainty as to the precise responsibility of all individuals involved in the research enterprise. It can also assist individuals in defending against allegations that they recklessly disregarded award requirements.

Roles and responsibilities for each position should be clearly communicated and accessible. Including roles and responsibilities in the institution's written policies and procedures and in its formal training and education program could accomplish this objective.

IV. Conclusion

The growth in Federal funding for scientific research over the past decade has prompted a need for more effective compliance by recipient institutions. Many institutions have recognized this need and have developed formal compliance programs. We believe that all research institutions would benefit from compliance programs that, if effectively implemented, would foster a culture of compliance that begins at the administration or management level and permeates throughout the organization. The purpose of this voluntary guidance is to offer a ''checklist'' of items that we believe is critical for refining or developing an effective compliance program. While the guidance focuses on award administration, adopting the principles and standards in the guidance would benefit other activities that are subject to Government regulation, including human subject research, ethics, and the responsible conduct of science.

Dated: November 21, 2005.

Daniel R. Levinson,

Inspector General.

Appendix A

Association of American Medical Colleges, Protecting Subjects, Preserving Trust, Promoting Progress: Policy and Guidelines for the Oversight of Individual Financial Interests in Human Subjects Research (December 2001).

Association of American Medical Colleges, Protecting Subjects, Preserving Trust, Promoting Progress: Principles and Recommendations for the Oversight of Individual Financial Interests in Human Subjects Research II (October 2002).

Council on Governmental Relations, Managing Externally Funded Research Programs: A Guide to Effective Management Practices (June 2005), available at *http://www.cogr.edu/docs.*

Grant, Geoffrey, *et al., Creating Effective Research Compliance Programs in Academic Institutions,* 74 American Medicine 9 (September 1999).

Kenney, Jr., Robert J., *''Dual Compensation'' and ''Separate Compensation'' Arrangements in the Wake of the Northwestern University Settlement,* 14 Research Management Review 1 (Spring 2004).

Murphy, Diane E., *The Federal Sentencing Guidelines for Organizations: A Decade of Promoting Compliance and Ethics,* 87 Iowa L. Rev. 697 (January 2002).

National Council of University Research Administrators (NCURA), A Guide to Managing Federal Grants for Colleges and Universities, available at *www.ncura.edu/publications/aispub.htm.*

National Institutes of Health, Office of Extramural Research, Proactive Compliance Site Visits FY 2000–FY 2002: A Compendium of Findings and Observations (2002).

Steinberg, Nisan A., *Regulation of Scientific Misconduct in Federally Funded Research,* 10 S. Cal. Interdisc. L.J. 39 (Fall 2000).

Walsh, Barbara E., *et al., The Compliance Umbrella,* Business Officer 18 (January 2000).

Walsh, Barbara E., *et al., A Model Operating Process,* Business Officer 42 (March 2000).

[FR Doc. E5–6548 Filed 11–25–05; 8:45 am]

BILLING CODE 4152–01–P

[14] Instances of noncompliance must be determined on a case-by-case basis. The existence or amount of a *monetary* loss to PHS or other Federal programs is not solely determinative of whether the conduct should be investigated and reported to governmental authorities. In fact, there may be instances where there is no readily identifiable monetary loss, but corrective actions are still necessary to protect the integrity of the program.

[15] Appropriate Federal authorities include OIG, the Criminal and Civil Divisions of the Department of Justice, the U.S. Attorney in the institution's district, and the Federal Bureau of Investigation. State authorities may include the appropriate division of the State Attorney General's office or, if separate from the Attorney General, the District Attorney or other criminal prosecutive office.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel, Cancer Etiology.

Date: December 16, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Michael B. Small, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8127, Bethesda, MD 20892–8328, 301–402–0996, *smallm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: November 15, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23350 Filed 11–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 Biomedical Imaging and Bioengineering Special Emphasis Panel, P01 Grant Review. December 5, 2005.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: II Democracy Plaza, 6707 Democracy Blvd., 223, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Prabha L. Atreya, PhD., Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging, and Bioengineering, Bethesda, MD 20892, (301) 496–8633, *atreyapr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: November 18, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23335 Filed 11–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Program Projects.

Date: December 7, 2005.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892–8401, 301–402–6226, *gm145a@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: November 18, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23336 Filed 10–25–05; 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 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 could constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Insulin Resistance in PCOS—Sequelae and Treatment.

Date: November 30, 2005.

Time: 2 p.m to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg. Rm. 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, 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: November 18, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23338 Filed 11–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Training and Career Development.

Date: November 22, 2005.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC; 6001 Executive Blvd., Ste. 3208, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.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: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Planning Grant Review.

Date: December 1, 2005.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: JoAnn McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892–9529, (301) 496–5324, *mcconnej@ninds.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. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 18, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23339 Filed 11–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Program Project Applications.

Date: November 22, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6704 Democracy Blvd, Suite 824, Bethesda, MD 20892. (301) 594–4955. *browneri@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 18, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23340 Filed 11–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Narcolepsy Investigations.

Date: December 12, 2005.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockville, MD (Telephone Conference Call).

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator,

Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892. 301–496–0660. *sawczuka@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Neurofibromatosis Program Project Review.

Date: December 13, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–496–4056.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Stroke Recovery Trial.

Date: December 13, 2005.

Time: 4 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–594–0635. *rc218u@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 18, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23341 Filed 11–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Small Research Grants (R03).

Date: December 5, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIAMS, One Democracy, 6701 Democracy Boulevard 824, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Room 824, MSC 4872, Bethesda, MD 20892–4874, (301) 594–4955, *browneri@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases; Research, National Institutes of Health, HHS)

Dated: November 18, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23343 Filed 11–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Core Center Grants (P30).

Date: December 12–13, 2005.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Yan Z. Wang, MD, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892, (301) 594–4957, *wangy1@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 18, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23344 Filed 11–25–05; 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 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 could constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Podiatry Summer Research Fellowships.

Date: December 13, 2005.

Time: 2 p.m to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review

Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 18, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23345 Filed 11–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Center Core Grants (P30).

Date: December 8, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Helen Lin, PhD, Scientific Review Administrator, NIH/NIAMS/RB, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 18, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23346 Filed 11–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical 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 General Medical Sciences Special Emphasis Panel, MBRS Support of Continuous Research Excellence.

Date: December 7, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN–12, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Meredith D. Temple-O'Connor, PhD, Office of Scientific Review, National Institute of General Medicinal Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–2772, *templeocm@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Development Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 16, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23347 Filed 11–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical 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 552(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 General Medical Sciences Special Emphasis Panel, R13 Conference Grants.

Date: December 12, 2005.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of General Medical Sciences, Natcher Bldg, 45 Center Drive, 3AN12, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Arthur L. Zachary, Phd, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12, Bethesda, MD 20892, (301) 594–2886, *zacharya@nigms.nih.gov*.

Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 15, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23351 Filed 11–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical 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 General Medical Sciences Special Emphasis Panel, E. coli Model Organism Resource.

Date: December 13, 2005.

Time: 10:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Brian Pike, PhD., Office of Scientific Review, National Institutes of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 15, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23352 Filed 11–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities, Office of Science Policy, Office of the Director; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Science Advisory Board for Biosecurity (NSABB), November 21, 2005, 9 a.m. to 6 p.m., National Institutes of Health, Building 31, Conference Room 10, C–Wing, Bethesda, MD 20892 which was published in the **Federal Register** on November 1, 2005, 70 FRN65908–65909.

The meeting has been changed to include a closed session immediately following the open session of the NSABB 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.

Dated: November 16, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23348 Filed 11–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immunology of Regulatory T Cells.

Date: November 30, 2005.

Time: 2:30 p.m. to 3:30 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: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892. 301–435–3566, *cooperc@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; Respiratory Sciences: Small Business.

Date: December 1, 2005.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mushtaq A. Khan, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@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; Kidney Related Small Business Review Panel.

Date: December 13, 2005.

Time: 2 p.m. to 4 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: Krystyna E. Rys-Sikora, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016J, MSC 7814, Bethesda, MD 20892, 301–451–1325, *ryssokok@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 18, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23337 Filed 11–25–05; 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, November 21, 2005, 10 a.m. to November 21, 2005, 11 a.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on November 2, 2005, 70 FR 66449–66451.

The meeting will be held November 28, 2005, from 3 p.m. to 4 p.m. The meeting location remains the same.

The meeting is closed to the public.

Dated: November 18, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23342 Filed 11–25–05; 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 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; Kidney, Nutrition, Obesity and Diabetes (KNOD) Member Conflicts.

Date: November 28, 2005.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Ann Guadagno, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7770, Bethesda, MD 20892, (301) 451–8011, *guadagma@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; Endothelial Dysfunction Special Emphasis Panel.

Date: November 30, 2005.

Time: 1 p.m. to 2 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: Lawrence E. Boerboom, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@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; Energy and Glucose Homeostasis.

Date: December 2, 2005.

Time: 11 a.m. to 1 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: Ann A. Jerkins, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, 301–435–4514, *jerkinsa@csr.nih.gov.*

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; Collaborative Projects with NCBCs.

Date: December 4–5, 2005.

Time: 7:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Malgorzata Klosek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@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.

Center for Scientific Review Special Emphasis Panel, Quiescence Program Project.

Date: December 6, 2005.

Time: 2:30 p.m. to 3:30 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: Charles R. Dearolf, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–435–1024, *dearolfc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: November 16, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23349 Filed 11–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Call Monitoring of National Suicide Prevention Lifeline Form—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services has funded a National Suicide Prevention Lifeline Network, consisting of a single toll-free telephone number that routes calls from anywhere in the United States to a network of local crisis centers. In turn, the local centers link callers to local emergency, mental health, and social service resources.

To ensure quality, the vast majority of crisis centers conduct on-site monitoring of selected calls by supervisors or trainers using unobtrusive listening devices. To monitor the quality of calls and to inform the development of training for networked crisis centers, the National Suicide Prevention Lifeline propose to remotely monitor calls routed to seven crisis centers during the shifts of consenting staff. The procedure will be anonymous, in that neither staff nor callers will be identified on the Call Monitoring Form. The monitor, a trained crisis worker, will code the type of problem presented by the caller, the elements of a suicide risk assessment that are completed by the crisis worker, as well as what action plan is developed with and/or what referral(s) are provided to the caller. No centers will be identified in reports.

During the shifts of consenting crisis staff, a recording will inform callers that some calls may be monitored for quality assurance purposes. Previous comparisons of matched centers that did and did not play the recording found no difference in hang-up rates before the calls were answered or within the first 15 seconds of the calls.

The seven centers to be monitored will be selected based on the geographic region(s) they serve. Once a center has

agreed to participate, the crisis workers will be provided an Informed Consent Form describing the purpose and procedures of the monitoring process and inviting them to participate. The Form also informs workers that they are free to participate or not, that they may withdraw their acceptance to participate at any time, and that if they choose not to participate, no calls during their shift will be monitored.

A total of 180 calls will be monitored during the first 5-month period. One year later, an additional 360 calls will be monitored, yielding a total of 540 monitored calls.

The estimated annual response burden to collect this information is as follows:

Instrument	Number of respondents	Responses per respondent	Burden per response (Hrs).	Total burden
Informed Consent Form	360	1	.07	26
National Suicide Prevention Lifeline Call Monitoring Form	6	60	.33	238
Totals	366			264

Written comments and recommendations concerning the proposed information collection should be sent by December 28, 2005 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: November 21, 2005.

Anna Marsh,

Director, Office of Program Services.

[FR Doc. 05–23366 Filed 11–25–05; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: The Evaluation of Networking Suicide Prevention Hotlines Follow-Up Assessment—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services has funded a National Suicide Prevention Lifeline Network, consisting of a single toll-free telephone number that routes calls from anywhere in the United States to a network of local crisis centers. In turn, the local centers link callers to local emergency, mental health, and social service resources.

With input from multiple experts in the field of suicide prevention, the project created a telephone interview survey to collect data on follow-up assessments of consenting individuals calling the Lifeline network. The ''Evaluation of Networking Suicide Prevention Hotlines Follow-Up Assessment'' will provide an empirical evaluation of crisis hotline services, necessary to optimize public health efforts to prevent suicidal behavior.

Seven hundred and twenty callers will be recruited from seven of the approximately 100 crisis hotline centers that participate in the Lifeline network. Trained crisis workers will conduct the follow-up telephone assessment (''Crisis Hotline Telephone Follow up Assessment'') within one month of the initial call. Assessments will be conducted only one time for each client. Strict measures to ensure confidentiality will be followed.

The resulting data will measure (1) suicide risk status at the time of and since the call, (2) depressive symptoms at follow-up, (3) service utilization since the call, (4) barriers to service access, and (5) the clients perception of the efficacy of the hotline intervention. The estimated annual response burden to collect this information is as follows:

Instrument	Number of respondents	Responses/ respondent	Burden/ responses (hours)	Annual burden (hours)
Initial request script	720	1	.08	57.6
Followup consent script	720	1	.17	122.4
Crisis Hotline Telephone Follow-up Assessment	720	1	.58	417.6
Total	720			598

Written comments and recommendations concerning the proposed information collection should be sent by December 28, 2005 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: November 21, 2005.

Anna Marsh, Ph.D.,

Director, Office of Program Services.

[FR Doc. 05–23367 Filed 11–25–05; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOMELAND SECURITY

Private Sector Office; Economic Impacts on Security Measures on the Travel and Tourism Industry

AGENCY: Office of the Secretary, Private Sector Office, DHS.

ACTION: Submission for OMB emergency review; comment request.

SUMMARY: The Department of Homeland Security, Office of the Secretary, Private Sector Office has submitted the following information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling Jenny Randall, 202–282–9801 (this is not a toll free number).

DATES: Comments are encouraged and will be accepted until December 28, 2005. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Comments and questions about this Information Collection Request should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Homeland Security, Office of Management and Budget, Room 10235, Washington, DC 20503.

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: Jenny Randall, 202–282–9801 (this is not a toll free number).

Analysis

Agency: Department of Homeland Security, Office of the Secretary, Private Sector Office.

Title: Economic Impacts of Mandatory and Voluntary Actions by the Travel and Tourism Industry.

OMB Number: 1601–NEW.

Frequency: One time collection.

Affected Public: Travel and Tourism Industry.

Number of Respondents: 4,514.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 4,514.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $0.00.

Description: The Department of Homeland Security, Office of the Secretary, Private Sector Office will submit the survey to the Travel and Tourism Industry. Three representative associations will disseminate the survey to their membership. This ensures the protection of their membership contact information. The information requested relates to the economic impact/costs of voluntary actions and mandated requirements of security on the travel and tourism industry. The information collected for this survey will be compiled by the Department of Homeland Security, Office of the Secretary, Private Sector Office. This information will be analyzed to provide the Secretary, DHS component agencies and industry a better picture regarding the hypothesized and actual economic impacts of voluntary and mandated security measures.

Dated: November 17, 2005.

Scott Charbo,

Chief Information Officer.

[FR Doc. 05–23311 Filed 11–25–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Application for Permission to Reapply for Admission Into the United States After Deportation or Removal; Form I–212.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 26, 2005 at 70 FR 56181, allowing for a 60-day public comment period. No comments were received by the U.S. Citizenship and Immigration Services. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 28, 2005. This process is conducted in accordance with 5 CFR part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1615–0018 in the subject box.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection*: Extension of a currently approved information collection.

(2) *Title of the Form/Collection*: Application for Admission to Reapply for Admission into the United States after Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection*: Form I–212.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract*: Primary: Individuals or Households. The information furnished on Form I–212 will be used by the USCIS to adjudicate applications filed by aliens requesting the Secretary of Homeland Security's consent to reapply for admission to the United States after deportation, removal, or departure, as provided under section 212.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond*: 4,200 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection*: 8,400 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm*.

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–23376 Filed 11–25–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0048).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 251, ''Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf.''

DATES: Submit written comments by January 27, 2006.

ADDRESSES: You may submit comments by any of the following methods listed below. Please use the Information Collection Number 1010–0048 as an identifier in your message.

- Public Connect on-line commenting system, *https://ocsconnect.mms.gov*. Follow the instructions on the website for submitting comments.
- E-mail MMS at *rules.comments@mms.gov*. Identify with Information Collection Number 1010–0048 in the subject line.
- Fax: 703–787–1093. Identify with Information Collection Number 1010–0048.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Process Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0048'' in your comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Rules Processing Team at (703) 787–1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations and the forms that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 251, Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf.

Form(s): MMS–327, MMS–328, and MMS–329

OMB Control Number: 1010–0048.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The OCS Lands Act (43 U.S.C. 1340) also states that ''any person authorized by the Secretary may conduct geological and geophysical explorations in the [O]uter Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this OCS Lands Act, and which are not unduly harmful to aquatic life in such area.'' The section further requires that permits to conduct such activities may only be issued if it is determined that the applicant is qualified; the activities are not polluting, hazardous, or unsafe; they do not interfere with other users of the area; and they do not disturb a site, structure, or object of historical or archaeological significance. Applicants for permits are required to submit form MMS–327 to provide the information necessary to evaluate their qualifications. Upon approval, respondents are issued a permit on either form MMS–328 or MMS–329 depending on whether the permit is for geophysical exploration or for geological exploration.

The OCS Lands Act (43 U.S.C. 1352) further requires that certain costs be reimbursed to the parties submitting required G&G information and data. Under the OCS Lands Act, permittees are to be reimbursed for the costs of reproducing any G&G data required to be submitted. Permittees are to be reimbursed also for the reasonable cost of processing geophysical information required to be submitted when processing is in a form or manner required by the Director of the Minerals Management Service (MMS) and is not used in the normal conduct of the business of the permittee.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR parts 250, 251, and 252. No items of a sensitive nature are collected. Responses are mandatory or required to obtain or retain a benefit.

Frequency: On occasion, annual; and as specified in permits.

Estimated Number and Description of Respondents: Approximately 100 Federal OCS permittees or notice filers.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burden for this collection is 8,272 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 251	Reporting and recordkeeping requirement	Hour burden
251.4(a), (b); 251.5(a), (b), (d); 251.6; 251.7.	Apply for permits (form MMS–327) to conduct G&G exploration, including deep stratigraphic tests/revisions when necessary.	6
251.4(b); 251.5(c), (d); 251.6.	File notices to conduct scientific research activities, including notice to MMS prior to beginning and after concluding activities.	6
251.6(b); 251.7(b)(5)	Notify MMS if specific actions should occur; report archaeological resources. (No instances reported since 1982.).	1
251.7	Submit information on test drilling activities under a permit, including form MMS–123—burden included under 1010–0141.	
251.7(c)	Enter into agreement for group participation in test drilling, including publishing summary statement; provide MMS copy of notice/list of participants. (No agreements submitted since 1989.).	1
251.7(d)	(1) Submit bond on deep stratigraphic test—burden included under 30 CFR part 256 (1010–0006).	
251.8(a)	Request reimbursement for certain costs associated with MMS inspections. (No requests in many years. OCS Lands Act requires Government reimbursement.).	1
251.8(b), (c)	Submit modifications to, and status/final reports on, activities conducted under a permit	8
251.9(c)	Notify MMS to relinquish a permit	½
251.10(c)	(1) File appeals—Not subject to the PRA.	
251.11; 251.12	Notify MMS and submit G&G data/information collected under a permit and/or processed by permittees or 3rd parties, including reports, logs or charts, results, analyses, descriptions, etc.	4
251.13	Request reimbursement for certain costs associated with reproducing data/information	20
251.14(a)	Submit comments on MMS intent to disclose data/information to the public	1
251.14(c)(2)	Submit comments on MMS intent to disclose data/information to an independent contractor/agent	1
251.14(c)(4)	Contractor/agent submits written commitment not to sell, trade, license, or disclose data/information without MMS consent.	1
Part 251	General departure and alternative compliance requests not specifically covered elsewhere in part 251 regulations.	2
Permit Form	Request extension of permit time period	1
Permit Form	Retain G&G data/information for 10 years and make available to MMS upon request	1

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) 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.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedure: MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E5–6574 Filed 11–25–05; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–554]

In the Matter of Certain Axle Bearing Assemblies, Components Thereof, and Products Containing the Same; 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 October 24, 2005, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of NTN Corporation of Japan. A supplement to the complaint was filed on November 15, 2005. The complaint, as

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 axle bearing assemblies, components thereof, and products containing the same by reason of infringement of at least claim 1 of U.S. Patent No. 5,620,263. 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 an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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: Barbara M. Flaherty, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–3052.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 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 November 18, 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 axle bearing assemblies, components thereof, or products containing the same by reason of infringement of claim 1 of U.S. Patent No. 5,620,263, 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—

NTN Corporation 3–17, 1-chome, Kyomachibori, Nishi-ku, Osaka, Japan 550–0003

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

ILJIN Bearing, 50 Hwangsung-dong, Gyeongju City, Kyungbuk, Korea 780–130

ILJIN USA, 28055 Haggerty Road, Novi, MI 48377–2902

(c) Barbara M. Flaherty, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, 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 § 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 not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation 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 respondents, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 21, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–6567 Filed 11–25–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–388–391 and 731–TA–816–821 (Review)]

Cut-to-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, Japan, and Korea

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty and countervailing duty orders on cut-to-length carbon quality steel plate from India, Indonesia, Italy, and Korea, and the antidumping duty order on cut-to-length carbon quality steel plate from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] In addition, the Commission determines that revocation of the antidumping duty order on cut-to-length carbon-quality steel plate from France would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Background

The Commission instituted these reviews on January 3, 2005 (70 FR 110) and determined on April 8, 2005 that it would conduct full reviews (70 FR 20173, April 18, 2005). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on May 13, 2005 (70 FR 25599). The hearing was held in Washington, DC, on September 27, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Deanna Tanner Okun and Commissioner Daniel R. Pearson dissenting.

[3] Commissioner Charlotte R. Lane dissenting.

The Commission transmitted its determination in these reviews to the Secretary of Commerce on November 21, 2005. The views of the Commission are contained in USITC Publication 3816 (November 2005), entitled *Cut-to-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, Japan, and Korea: Investigation Nos. 701–TA–388–391 and 731–TA–816–821 (Review).*

By order of the Commission.

Issued: November 21, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–6565 Filed 11–25–05; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The public hearing on proposed amendments to the Federal Rules of Civil Procedure, scheduled for December 2, 2005, in Washington, DC, has been canceled. [Original notice of hearing appeared in the **Federal Register** of July 14, 2005.]

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: November 21, 2005.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 05–23325 Filed 11–25–05; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Additional day of open meeting.

SUMMARY: The meeting of the Advisory Committee on Rules of Bankruptcy Procedure has added one additional day. The meeting will be held on March 8–10, 2006. The tree-day meeting will start each day at 8:30 a.m., and will be held at the University of North Carolina School of Law, Ridge Road, Van Hecke-Wettach Hall, in Chapel Hill, North Carolina. [Original notice of the meeting appeared in the **Federal Register** of September 13, 2005.]

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: November 21, 2005.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 05–23326 Filed 11–25–05; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on October 28, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1933, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Norwegian eStandards Project, Oslo, Norway; and University of Maryland University College, Adelphi, MD have been added as parties to this venture. Also, Industry Canada, Ottawa, Ontario, Canada has withdrawn as a party to this venture. In addition, FD Learning has changed its name to Tribal Technology, Sheffield, United Kingdom.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on August 1, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 26, 2005 (70 FR 50407).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–23319 Filed 11–25–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on October 19, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. (''the Act''), National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Adam Aircraft Industries, Englewood, CO; Advanced Tooling Corporation, Vienna, VA; Campfire Interactive, Inc., Ann Arbor, MI; CGTech, Irvine, CA; City Machine Tool and Die Co., Inc., Muncie, IN; Clockwork Solutions, Inc., Austin, TX; Detroit Tool & Engineering Division, Vienna Hills, IL; Dimensional Photonics International, Inc., Burlington, MA; Edison Welding Institute, Columbus, OH; EOS of North America, Inc.; Chanhasen, MN; ESSIbuy.com, Inc.; St. Louis, MO; Ex One Corporation, Irwin, PA; Global Shop Solutions, Inc., The Woodlands, TX; OMAX Corporation, Kent, WA; RW Appleton & Company, Inc., Sterling Heights, MI; STEP Tools, Inc., Troy, NY; Systems Documentation, Inc., South Plainfield, NJ; and Vought Aircraft Industries, Dallas, TX have been added as parties to this venture. Also, Arizona State University, Tempe, AZ; Collins & Aikman Corporation, Troy, MI; Didactics, Inc., Alexandria, VA; Endicott Interconnect Technologies, Inc., Endicott, NY; FOBA North America Laser, Lee's Summit, MO; MicroDextrity, Albuquerque, NM; Opticore, Inc., Troy, MI; Partnerships Limited, Inc., Rocky Hill, NJ; PricewaterhouseCoopers AUTOFACTS Division, Bloomfield Hills, MI; and Precon Machining Optimization

Technologies, Gross Pointe Park, MI have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on May 31, 2005. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 7, 2005 (70 FR 39339).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–23317 Filed 11–25–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on October 31, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Network Centric Operations Industry Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cubic Defense Applications, Inc., San Diego, CA; DCN, Paris, France; Association for Enterprise Integration, Arlington, VA; LynuxWorks, Inc., San Jose, CA; Instrumentointi Oy, Tampere, Finland; and OrderOne Networks, Orangeville, Ontario, Canada have been added as parties to this venture. Also, Bay Microsystems, Inc., Santa Clara, CA; Parametric Technology, Corporation, Needham, MA; and McDonald Bradley, Inc., Herndon VA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Network Centric Operations Industry Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On November 19, 2004, Network Centric Operations Industry Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on August 5, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 26, 2005 (70 FR 50407).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–23320 Filed 11–25–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on October 28, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Hefei University of Technology Institute, Hefei, People's Republic of China; Mixel, Inc., San Jose, CA; and Verisity Design, Inc., Mountain View, CA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on July 14, 2005. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 1, 2005 (70 FR 44118).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–23318 Filed 11–25–05; 8:45 am]

BILLING CODE 4410–11–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act; Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will no longer be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov/events/advisory.jsp*. This information may also be requested by telephoning 703/292–8182.

Dated: November 22, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–23389 Filed 11–22–05; 4:43 pm]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Meetings; Sunshine Act

AGENCY HOLDING MEETING: National Science Foundation, National Science Board and its Subdivisions.

DATE AND TIME: November 30–December 1, 2005.

November 30, 2005 8 a.m.–5 p.m.

Sessions:

8 a.m.–9 a.m. Open
9 a.m.–9:30 a.m. Open
9:30 a.m.–10 a.m. Open
10 a.m.–11:30 a.m. Open
11:30 a.m.–12 a.m. Open
12 a.m.–12:15 p.m. Closed
1:15 p.m.–3 p.m. Open
3 p.m.–4:30 p.m. Closed
4:30 p.m.–4:50 p.m. Open
4:50 p.m.–5 p.m. Closed

December 1, 2005 8 a.m.–3:30 p.m.

Sessions:

8 a.m.–10 a.m. Open
10 a.m.–11 a.m. Open
11 a.m.–11:30 a.m. Closed
1 p.m.–1:15 p.m. Executive Closed
1:15 p.m.–1:30 p.m. Closed
1:30 p.m.–3:30 p.m. Open

PLACE: National Science Foundation, 4201 Wilson Blvd, Room 1235, Arlington, VA 22230.

PUBLIC MEETING ATTENDANCE: All visitors must report to the NSF's visitor's desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

CONTACT INFORMATION: Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for updated schedule. NSB Office: (703) 292–7000.

STATUS: Part of this meeting will be closed to the public.

Part of this meeting will be open to the public.

Matters To Be Considered

Wednesday, November 30, 2005

Open

Education and Human Resources Subcommittee on S&E Indicators (8 a.m.–9 a.m.), Room 1235.

- Approval of September Minutes.
- Chairman's Remarks.
- Progress Report on *Science and Engineering Indicators 2006.*
- Progress Report on Board's Companion Piece.
- Future Content and Presentation for Indicators.

Committee on Programs and Plans Task Force on Transformative Research, (9 a.m.–9:30 a.m.), Room 1235.

- Approval of September Minutes.
- Update on Workshop II, ''Key Factors in Identifying and Fostering Transformative Science,'' Santa Fe, NM, December 16, 2005.
- Discussion of Workshop III.

Committee on Programs and Plans Task Force on International Science, (9:30 a.m.–10 a.m.), Room 1235.

- Overview of Charge for Task Force.
- Discussion of Potential Task Force Activities.

Joint Session: Committee on Strategy and Budget and Committee on Programs and Plans, (10 a.m.–11:30 a.m..), Room 1235.

- Centers and the NSF Portfolio.
- Funding Rates, Award Size and Duration.

Committee on Strategy and Budget (11:30 a.m.–12 p.m.), Room 1235.

- Approval of September 2005 Minutes.
- Approval of October 2005 Teleconference Minutes.
- Discussion of NSF Strategic Plan: FY 2003–2008.
- Status of FY 2006 Budget Request to Congress.

Committee on Programs and Plans (1:15 p.m.–3 p.m.), Room 1235.

- Approval of September Minutes.
- Status Reports.
  - Transformative Research Task Force.
  - International Science & Engineering Task Force.
- Hurricane Science & Engineering.
- Process for Sending Information and Actions to CPP & NSB—Annual Plan.
  - NSF Linkages to the Millennium Ecosystem Assessment Report.
- Major Research Facilities: Guidelines for Planning and Managing the MREFC Account.
- Status Report: Cyberinfrastructure Vision.

Executive Committee (4:30 p.m.–4:50 p.m.), Room 1235.

- Approval of September Minutes.
- Updates or New Business from Committee Members.
  - Meeting Attendance Guidelines.
  - 2006 NSB Retreat and Visit.

Closed

Committee on Strategy and Budget (12 p.m.–12:15 p.m.), Room 1235.

- Status of FY 2007 Budget Submission to OMB.

Committee on Programs and Plans (3 p.m.–4:30 p.m.), Room 1235.

- Awards and Agreements.

Executive Committee (4:50 p.m.–5 p.m.), Room 1235.

- Director's Items: Specific Personnel Matters.

Thursday, December 1, 2005

Open

Committee on Education and Human Resources (8 a.m.–10 a.m.), Room 1235.

- Approval of September Minutes.
- Congressional items.
- NSB/EHR February 2006 Committee meeting.
- Updates:
- Innovation Summit and Future Summits.
- Math and Science Partnership Conference.
- NSB Commission on Education.
- NSF Integration of Research and Education.
- Follow-up to Workshop on ''Engineering Workforce Issues and Engineering Education: What Are the Linkages?''
- Subcommittee on Science and Engineering Indicators.

Committee on Audit and Oversight (10 a.m.–11 a.m.), Room 1235.

- Approval of September Minutes.
- OIG Semiannual Report and Management Response to the Report.
- 2005 Financial Statement Audit.
- Chief Financial Officer's Update on Performance and Accountability Report/2005 Financial Statement Audit.
- Business Analysis Update.

Closed Session

Committee on Audit and Oversight (11 a.m.–11:30 a.m.), Room 1235.

- Pending Investigations.

Plenary Session of the Board (1 p.m.–3:30 p.m.)

Executive Closed Session (1 p.m.–1:15 p.m.), Room 1235.

- Approval of September Executive Closed Minutes.

Closed Session (1:15 p.m.–1:30 p.m.), Room 1235.

- Approval of September 2005 Closed Session Minutes.
- Awards and Agreements.
- Closed Committee Reports.

Open Session (1:30 p.m.–3:30 p.m.), Room 1235.

- Approval of September 2005 Minutes.
- Resolution to Close February 2006.
- Chairman's Report.
- Report of *ad hoc* Task Group on Vision for NSF.
- Director's Report.
- NSF Congressional Update.
- Open Committee Reports.

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. 05–23390 Filed 11–22–05; 4:43 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–27]

Pacific Gas and Electric Company; Notice of Issuance of Materials License SNM–2514 for the Humboldt Bay Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Materials License.

FOR FURTHER INFORMATION CONTACT: James R. Hall, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–1336; fax number: (301) 415–8555; e-mail: *jrh@nrc.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Materials License No. SNM–2514 to the Pacific Gas and Electric Company (PG&E) for the receipt, possession, storage, and transfer of spent fuel at the Humboldt Bay Independent Spent Fuel Storage Installation (ISFSI), to be located in Humboldt County, California. This Materials License is issued under the provisions of Title 10 of the Code of Federal Regulations, part 72 (10 CFR part 72), and is effective as of the date of issuance. A license for an ISFSI under 10 CFR part 72 is issued for 20 years, but the licensee may seek to renew the license prior to its expiration.

The Humboldt Bay ISFSI is licensed to provide interim storage in a dry cask storage system for up to 31 metric tons of uranium contained in intact and damaged fuel assemblies and associated radioactive materials resulting from the operation of the Humboldt Bay Power Plant, Unit 3. The dry cask storage system authorized for use is a site-specific version of the HI–STAR 100 system, designated as the HI–STAR HB system, designed by Holtec International.

Following receipt of PG&E's application dated December 15, 2003, the NRC staff published a ''Notice of Docketing, Notice of Proposed Action, and Notice of Opportunity for a Hearing for a Materials License for the Humboldt Bay Independent Spent Fuel Storage Installation'' in the **Federal Register** on February 11, 2004 (69 FR 6701). In conjunction with the issuance of this license, the staff published a ''Notice of Issuance of Environmental Assessment and Finding of No Significant Impact for the Humboldt Bay Independent Spent Fuel Storage Installation,'' in the **Federal Register** on November 16, 2005 (70 FR 69605). The staff's Environmental Assessment (EA) considered the impacts of the construction, operation and decommissioning of an ISFSI at the Humboldt Bay site, including impacts resulting from the use of the HI–STAR HB dry cask storage system. The staff has determined that no significant environmental impacts will result from the proposed Humboldt Bay ISFSI.

The NRC staff has completed its environmental, safeguards, and safety reviews of the Humboldt Bay ISFSI license application and safety analysis report, as amended. The NRC staff issued Materials License No. SNM–2514 and its Safety Evaluation Report (SER) for the Humboldt Bay Independent Spent Fuel Storage Installation on November 17, 2005.

Further details with respect to this action are provided in the application dated December 15, 2003, as amended October 1, 2004; the staff's EA, dated November 16, 2005; Materials License SNM–2514 and the staff's SER, dated November 17, 2005; and other related documents, which are publicly available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at: *http://www.nrc.gov/reading-rm/adams.html*. These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 17th day of November, 2005.

For the Nuclear Regulatory Commission.

James R. Hall,

Senior Project Manager, Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–6549 Filed 11–25–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the Joint ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Human Factors; Notice of Meeting

The ACRS Subcommittees on Reliability and Probabilistic Risk Assessment (PRA) and on Human Factors will hold a joint meeting on December 15–16, 2005, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, December 15, 2005—8:30 a.m. until the conclusion of business.

Friday, December 16, 2005—8:30 a.m. until the conclusion of business.

The joint subcommittees will examine the current status of human reliability analysis including ATHEANA, SPAR–H, and industry approaches (if available). The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and industry regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Eric A. Thornsbury, (Telephone: 301–415–8716) or Dr. John H. Flack, Senior Technical Advisor (Telephone: 301–415–0426) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individuals at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: November 21, 2005.

Michael R. Snodderly,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. 05–23321 Filed 11–25–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Power Uprates; Revised

The agenda for the November 29–30, 2005, ACRS Subcommittee on Power Uprates has been revised to include several sessions that may be closed to discuss information that is proprietary to General Electric Nuclear Energy, and other contractors of the licensee pursuant to 5 U.S.C. 552b(c)(4). All other items remain the same as published in the **Federal Register** on Monday, November 14, 2005 (70 FR 69169).

Further information regarding this meeting can be obtained by contacting Mr. Ralph Caruso (Telephone: 301–415–8065) between 7:30 a.m. and 4:15 p.m. (ET).

Dated: November 18, 2005.

Michael L. Scott,

Branch Chief, ACRS/ACNW.

[FR Doc. E5–6550 Filed 11–25–05; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: David Guilford, Center for Leadership and Executive Resources Policy, Division for Strategic Human Resources Policy, 202–606–1391.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between October 1, 2005, and October 31, 2005.

Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter.

A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A appointments were approved for October 2005.

Schedule B

No Schedule B appointments were approved for October 2005.

Schedule C

The following Schedule C appointments were approved during October 2005:

Section 213.3303 Executive Office of the President

Office of Management and Budget

BOGS60151 Confidential Assistant to the Administrator, E-Government and Information Technology. Effective October 4, 2005.

BOGS60152 Confidential Assistant to the Executive Associate Director. Effective October 12, 2005.

Office of the United States Trade Representative

TNGS600489 Staff Assistant to the Chief of Staff. Effective October 14, 2005.

TNGS00018 Attorney-Adviser to the Chief of Staff. Effective October 25, 2005.

Section 213.3304 Department of State

DSGS60996 Special Assistant to the Senior Advisor to the Secretary and White House Liaison. Effective October 4, 2005.

DSGS60994 Senior Advisor to the Under Secretary for Management. Effective October 11, 2005.

DSGS60989 Special Assistant to the Assistant Secretary for Economic and Business Affairs. Effective October 12, 2005.

DSGS060991 Foreign Affairs Officer to the Assistant Secretary for Western Hemispheric Affairs. Effective October 19, 2005.

DSGS60977 Special Assistant to the Assistant Secretary for Economic and Business Affairs. Effective October 19, 2005.

DSGS61003 Special Assistant to the Assistant Secretary for Economic and Business Affairs. Effective October 25, 2005.

DSGS61007 Staff Assistant to the Director, Policy Planning Staff. Effective October 27, 2005.

DSGS61008 Special Assistant to the Assistant Secretary for International Organizational Affairs. Effective October 27, 2005.

Section 213.3305 Department of the Treasury

DYGS00462 Senior Advisor to the Under Secretary for International Affairs. Effective October 4, 2005.

Section 213.3306 Department of Defense

DDGS16893 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective October 1, 2005.

DDGS16901 Special Assistant to the Assistant Secretary of Defense (Public Affairs). Effective October 27, 2005.

Section 213.3307 Department of the Army

DWGS00063 Confidential Assistant to the Assistant Secretary of Army (Installations and Environment). Effective October 3, 2005.

Section 213.3310 Department of Justice

DJGS00445 Special Assistant to the Director, Community Relations Service. Effective October 14, 2005.

DJGS00178 Counsel to the Assistant Attorney General (Legal Policy). Effective October 18, 2005.

DJGS00303 Associate Director to the Director. Effective October 18, 2005.

DJGS00379 Special Assistant to the Director, Office of Public Affairs. Effective October 19, 2005.

DJGS00322 Counsel to the Assistant Attorney General (Legal Policy). Effective October 24, 2005.

DJGS00373 Staff Assistant to the Director, Office of Public Affairs. Effective October 28, 2005.

Section 213.3311 Department of Homeland Security

DMGS00425 Special Assistant and Policy Analyst to the Director, National Capital Region Coordination. Effective October 14, 2005.

DMGS00427 Counselor to the Director, Bureau of Citizenship and Immigration Services. Effective October 19, 2005.

DMGS00428 Advisor to the Chief of Staff, Effective October 19, 2005.

DMGS00408 Assistant Director of Legislative Affairs for Mass Transit and Immigration to the Assistant Secretary for Legislative Affairs. Effective October 25, 2005.

DMGS00430 Attorney-Adviser (General) to the General Counsel. Effective October 28, 2005.

DMGS00431 Special Assistant to the Assistant Secretary for Information Analysis. Effective October 28, 2005.

DMGS00432 Special Assistant to the Executive Director, Homeland Security Advisory Council. Effective October 28, 2005.

DMGS00433 Junior Writer and Researcher to the Director of Speechwriting. Effective October 28, 2005.

DMGS00435 Advisor to the Director to the White House Liaison. Effective October 28, 2005.

DMGS00437 Advisor to the Director to the Chief of Staff for Citizenship and Immigration Services. Effective October 28, 2005.

DMOT00439 Special Assistant to the Assistant Secretary, Transportation

Security Administration. Effective October 31, 2005.

Section 213.3312 Department of the Interior

DIGS01049 Counselor to the Assistant Secretary—Water and Science to the Assistant Secretary for Water and Science. Effective October 13, 2005.

Section 213.3313 Department of Agriculture

DAGS00829 Special Assistant to the Chief Information Officer. Effective October 13, 2005.

DAGS00828 Special Assistant to the Under Secretary for Rural Development. Effective October 14, 2005.

DAGS00832 Confidential Assistant to the Administrator. Effective 25, 2005.

DAGS00833 Speechwriter to the Director of Communications. Effective 28, 2005.

DAGS00830 Special Assistant to the Deputy Administrator, Program Operations. Effective October 28, 2005.

DAGS00831 Special Assistant to the Deputy Assistant Secretary for Congressional Relations. Effective October 31, 2005.

Section 213.3314 Department of Commerce

DCGS00352 Special Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective October 13, 2005.

DCGS00562 Special Assistant to the Deputy Secretary. Effective October 17, 2005.

DCGS00346 Confidential Assistant to the Director, Office of White House Liaison. Effective October 25, 2005.

DCGS00162 Senior Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective October 27, 2005.

DCGS00379 Senior Counsel to the General Counsel. Effective October 27, 2005.

DCGS00476 Special Assistant to the Director, Executive Secreteriat. Effective October 28, 2005.

DCGS00635 Director of Advisory Committees to the Assistant Secretary for Manufacturing and Services. Effective October 28, 2005.

DCGS00560 Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning Effective October 31, 2005.

Section 213.3315 Department of Labor.

DLGS60086 Senior Advisor to the Assistant Secretary for Employment Standards. Effective October 12, 2005.

DLGS60018 Deputy Director of Scheduling to the Director of Scheduling. Effective October 25, 2005.

DLGS60171 Director of Scheduling to the Chief of Staff. Effective October 25, 2005.

DLGS60218 Special Assistant to the Assistant Secretary for Public Affairs. Effective October 28, 2005.

Section 213.3316 Department of Health and Human Services.

DHGS60169 Special Assistant to the Assistant Secretary for Public Affairs. Effective October 13, 2005.

DHGS60168 Confidential Assistant to the Deputy Assistant Secretary for Legislation (Planning and Budget) Effective October 19, 2005.

Section 213.3317 Department of Education

DBGS00469 Special Assistant to the Chief of Staff. Effective October 4, 2005.

DBGS00471 Confidential Assistant to the Secretary. Effective October 12, 2005.

DBGS00465 Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective October 17, 2005.

DBGS00470 Special Assistant to the Assistant Secretary for Vocational and Adult Education. Effective October 18, 2005

DBGS00473 Secretary's Regional Representative, Region VI to the Director, Regional Services. Effective October 24, 2005.

DBGS00464 Special Assistant to the Chief of Staff. Effective October 27, 2005.

DBGS00474 Deputy Secretary's Regional Representative, Region IV to the Director, Regional Services. Effective October 28, 2005.

DBGS00472 Special Assistant to the Assistant Secretary, Office of Communications and Outreach. Effective October 31, 2005.

Section 213.3318 Environmental Protection Agency

EPGS05011 Confidential Assistant to the Deputy Administrator. Effective October 4, 2005.

EPGS05009 Program Advisor to the Deputy Associate Administrator. Effective October 25, 2005.

Section 213.3325 United States Tax Court

JCGS60061 Secretary (Confidential Assistant) to the Chief Judge. Effective October 4, 2005.

Section 213.3328 Broadcasting Board of Governors.

IBGS00021 Special Assistant to the Director, Voice of America. Effective October 14, 2005.

Section 213.3330 Security and Exchange Commission.

SEOT60007 Confidential Assistant to a Commissioner, Effective October 13, 2005.

SEOT90005 Speechwriter to the Chairman. Effective October 13, 2005.

Section 213.3331 Department of Energy

DEGS00495 Senior Counsel to the General Counsel. Effective October 12, 2005.

DEGS00497 Senior Advisor for External Affairs to the Director of Congressional, Intergovernmental and Public Affairs. Effective October 19, 2005.

DEGS00498 Special Advisor for Public Affairs to the Director of Congressional, Intergovernmental and Pubic Affairs. Effective October 24, 2005.

DEGS00493 Senior Policy Advisor to the Director, Office of Management. Effective October 28, 2005.

Section 213.3332 Small Business Administration

SBGS00592 Regional Administrator. Region III, Philadelphia, Pennsylvania, to the Assistant Administrator for Field Options. Effective October 12, 2005.

SBGS00593 Deputy Associate Administrator for Congressional and Legislative Affairs to the Associate Administrator for Congressional and Legislative Affairs. Effective October 25, 2005.

Section 213.3355 Social Security Administration

SZGS00018 Special Assistant to the Chief of Staff. Effective October 13, 2005.

Section 213.3357 National Credit Union Administration.

CUOT0030 Associate Director of External Affairs to the Chairman. Effective October 19, 2005.

Section 213.3382 National Endowment for the Humanities

NHGS00079 Advisor to the Chairman. Effective October 24, 2005.

Section 213.3394 Department of Transportation.

DTGS60342 Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance. Effective October 13, 2005.

DTGS60117 Assistant to the Secretary for Policy. Effective October 18, 2005.

DTGS60369 Deputy Assistant Secretary for Governmental Affairs to the Assistant Secretary for Governmental Affairs. Effective October 24, 2005.

DTGS60003 Special Assistant to the Secretary and Deputy Director for Scheduling and Advance to the Secretary. Effective October 28, 2005.

Section 213.3397 Federal Housing Finance Board

FBOT00005 Staff Assistant to the Chairman. Effective October 25, 2005.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management

Linda M. Springer,

Director.

[FR Doc. 05–23388 Filed 11–22–05; 5:04 pm]

BILLING CODE 6325–39–M

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

Date and Times: Tuesday, December 6, 2005; 8 a.m. and 10 a.m.

Place: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

Status: December 6–8 a.m. (Open); 10 a.m. (Closed)

Matters To Be Considered

Tuesday, December 6 at 8 a.m. (Open)

1. Minutes of the Previous Meetings, November 1, and 16, 2005.
2. Remarks of the Postmaster General and CEO Jack Potter.
3. Committee Reports.
4. Fiscal Year 2005 Audited Financial Statements.
5. Postal Service Fiscal Year 2005 Annual Report.
6. Final Fiscal Year 2007 Appropriation Request.
7. Capital Investment—Mail Processing Infrastructure (MPI), Phase 3.
8. Tentative Agenda for the January 10, 2006, meeting in Washington, DC.

Tuesday, December 6 at 10 a.m. (Closed)

1. Financial Update and Rate Case Planning.
2. Labor Negotiations Planning.
3. Strategic Planning.
4. Personnel Matters and Compensation Issues.

Contact Person for More Information: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 05–23391 Filed 11–22–05; 4:43 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 0–1; SEC File No. 270–472; OMB Control No. 3235–0531.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') plans to submit to the Office of Management and Budget requests for extension of the previous approved collections of information discussed below.

The Investment Company Act of 1940 (the ''Act'') [1] establishes a comprehensive framework for regulating the organization and operation of investment companies (''funds''). A principal objective of the Act is to protect fund investors by addressing the conflicts of interest that exist between funds and their investment advisers and other affiliated persons. The Act places significant responsibility on the fund board of directors in overseeing the operations of the fund and policing the relevant conflicts of interest.[2]

In one of its first releases, the Commission exercised its rulemaking authority pursuant to sections 38(a) and 40(b) of the Act by adopting rule 0–1 [17 CFR 270.0–1].[3] Rule 0–1, as subsequently amended on numerous occasions, provides definitions for the terms used by the Commission in the rules and regulations it has adopted pursuant to the Act. The rule also contains a number of rules of construction for terms that are defined either in the Act itself or elsewhere in the Commission's rules and regulations. Finally, rule 0–1 defines terms that serve as conditions to the availability of certain of the Commission's exemptive rules. More specifically, the term ''independent legal counsel,'' as defined in rule 0–1, sets out conditions that funds must meet in order to rely on any of ten exemptive rules (''exemptive rules'') under the Act.[4]

The Commission amended rule 0–1 to include the definition of the term ''independent legal counsel'' in 2001.[5] This amendment was designed to enhance the effectiveness of fund boards of directors and to better enable investors to assess the independence of those directors. The Commission also amended the exemptive rules to require that any person who serves as legal counsel to the independent directors of any fund that relies on any of the exemptive rules must be an ''independent legal counsel.'' This requirement was added because independent directors can better perform the responsibilities assigned to them under the Act and the rules if they have the assistance of truly independent legal counsel.

If the board's counsel has represented the fund's investment adviser, principal underwriter, administrator (collectively, ''management organizations'') or their ''control persons'' [6] during the past two years, rule 0–1 requires that the board's independent directors make a determination about the adequacy of the counsel's independence. A majority of the board's independent directors are required to reasonably determine, in the exercise of their judgment, that the counsel's prior or current representation of the management organizations or their control persons was sufficiently limited to conclude that it is unlikely to adversely affect the counsel's professional judgment and legal representation. Rule 0–1 also requires that a record for the basis of this determination is made in the minutes of the directors' meeting. In addition, the independent directors must have obtained an undertaking from the counsel to provide them with the information necessary to make their determination and to update promptly that information when the person begins to represent a management organization or control person, or when he or she materially increases his or her representation. Generally, the independent directors must re-evaluate their determination no less frequently than annually.

[1] 15 U.S.C. 80a–1.

[2] For example, fund directors must approve investment advisory and distribution contracts. See 15 U.S.C. 80a–15(a), (b), and (c).

[3] Investment Company Act Release No. 4 (Oct. 29, 1940) [5 FR 4316 (Oct. 31, 1940)]. Note that rule 0–1 was originally adopted as rule N–1.

[4] The relevant exemptive rules are: Rule 10f–3 [17 CFR 270.10f–3], Rule 12b–1 [17 CFR 270.12b–1], Rule 15a–4(b)(2) [17 CFR 270.15a–4(b)(2)], Rule 17a–7 [17 CFR 270.17a–7], Rule 17a–8 [17 CFR 270.17a–8], Rule 17d–1(d)(7) [17 CFR 270.17d–1(d)(7)], Rule 17e–1(c) [17 CFR 270.17e–1(c)], Rule 17g–1 [17 CFR 270.17g–1], Rule 18f–3 [17 CFR 270.18f–3], and Rule 23c–3 [17 CFR 270.23c–3].

[5] *See* Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3735 (Jan. 16, 2001)].

[6] A ''control person'' is any person—other than a fund—directly or indirectly controlling, controlled by, or under common control, with any of the fund's management organizations. *See* 17 CFR 270.01(a)(6)(iv)(B).

Any fund that relies on one of the exemptive rules must comply with the requirements in the definition of ''independent legal counsel'' under rule 0–1. We assume that approximately 3870 funds rely on at least one of the exemptive rules annually.[7] We further assume that the independent directors of approximately one-third (1290) of those funds would need to make the required determination in order for their counsel to meet the definition of independent legal counsel.[8] We estimate that each of these 1290 funds would be required to spend, on average, 0.75 hours annually to comply with the recordkeeping requirement associated with this determination, for a total annual burden of approximately 968 hours. Based on this estimate, the total annual cost for all funds' compliance with this rule is approximately $66,126. To calculate this total annual cost, the Commission staff assumed that two-thirds of the total annual hour burden (645 hours) would be incurred by compliance staff with an average hourly wage rate of $89 per hour,[9] and one-third of the annual hour burden (323 hours) would be incurred by clerical staff with an average hourly wage rate of $27 per hour.[10]

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: November 16, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6538 Filed 11–25–05; 8:45 am]

BILLING CODE 8010–01–P

[7] Based on statistics compiled by Commission staff, we estimate that there are approximately 4300 funds that could rely on one or more of the exemptive rules. Of those funds, we assume that approximately 90 percent (3870) actually rely on at least one exemptive rules annually.

[8] We assume that the independent directors of the remaining two-thirds of those funds will choose not to have counsel, or will rely on counsel who has not recently represented the fund's management organizations or control persons. In both circumstances, it would not be necessary for the fund's independent directors to make a determination about their counsel's independence.

[9] The staff estimates concerning the wage rate for professional time and for clerical time are based on salary information complied by the Securities Industry Association. We use the annual salaries listed for the Director of Compliance and Executive Secretary positions to make our estimates. See Securities Industry Association, *Report on Management and Professional Earnings in the Securities Industry* (2004) (available in part at *http://www.careerjournal.com/salaryhiring* (last visited Sept. 14, 2005)). Note that the average hourly wage rate estimates are modified for an 1800-hour work-year, 2.7% inflation and adjusted upward by 35% to reflect possible overhead costs and employee benefits.

[10] (645 × $89/hour) + (323 × $27/hour) = $66,126.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17a–7; SEC File No. 270–238; OMB Control No. 3235–0214.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17a–7 [17 CFR 270.17a–7] under the Investment Company Act of 1940 (the ''Act'') is entitled ''Exemption of certain purchase or sale transactions between an investment company and certain affiliated persons thereof.'' It provides an exemption from section 17(a) of the Act for purchases and sales of securities between registered investment companies (''funds''), that are affiliated persons (''first-tier affiliates'') or affiliated persons of affiliated persons (''second-tier affiliates''), or between a fund and a first-or second-tier affiliate other than another fund, when the affiliation arises solely because of a common investment adviser, director, or officer. Rule 17a–7 requires funds to keep various records in connection with purchase or sale transactions effected in reliance on the rule. The rule requires the fund's board of directors to establish procedures reasonably designed to ensure that the rule's conditions have been satisfied. The board is also required to determine, at least on a quarterly basis, that all affiliated transactions effected during the preceding quarter in reliance on the rule were made in compliance with these established procedures. If a fund enters into a purchase or sale transaction with an affiliated person, the rule requires the fund to compile and maintain written records of the transaction.[1] The Commission's examination staff uses these records to evaluate for compliance with the rule.

The Commission estimates that approximately 968 funds enter into transactions effected in reliance on rule 17a–7 each year and, therefore, are subject to the rule's information collection requirements.[2] The average annual burden for rule 17a–7 is estimated to be approximately two burden hours per respondent, for an annual total of 1935 burden hours for all respondents.[3] The estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Rule 17a–7 requires investment companies to maintain and preserve permanently a written copy of the procedures governing rule 17a–7 transactions. In addition, investment companies are required to maintain written records of each rule 17a–7

[1] The written records are required to set forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, and the information or materials upon which the board of directors' determination that the transaction was in compliance with the procedures was made.

[2] These estimates are based on conversations with the examination and inspections staff of the Commission and fund representatives. Based on these conversations, the Commission staff estimates that most investment companies (3870 of the estimated 4300 registered investment companies) have adopted procedures for compliance with rule 17a–7. Of these 3870 investment companies, the Commission staff estimates that each year approximately 25% (968) enter into transactions affected by rule 17a–7.

[3] This estimate is based in turn on the staff's estimate that the approximately 968 funds that rely on rule 17a–7 annually engage in an average of 8 rule 17a–7 transactions and spend approximately 15 minutes per transaction on recordkeeping required by the rule.

transaction for a period of not less than six years from the end of the fiscal year in which the transaction occurred. The collection of information required by rule 17a–7 is necessary to obtain the benefits of the rule. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: November 17, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6539 Filed 11–25–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 30a–8; SEC File No. 270–516; OMB Control No. 3235–0574.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB''), for extension and approval.

Rule 3a–8 of the Investment Company Act of 1940 (the ''Act''), serves as a nonexclusive safe harbor from investment company status for certain research and development companies (''R&D companies''). The rule requires that the board of directors of an R&D company seeking to rely on the safe harbor adopt an appropriate resolution evidencing that the company is primarily engaged in a non-investment business and record that resolution contemporaneously in its minute books or comparable documents.[1] An R&D company seeking to rely on the safe harbor must retain these records only as long as such records must be maintained in accordance with state law.

Rule 3a–8 contains an additional requirement that is also a collection of information within the meaning of the PRA. The board of directors of a company that relies on the safe harbor under rule 3a–8 must adopt a written policy with respect to the company's capital preservation investments. We expect that the board of directors will base its decision to adopt the resolution discussed above, in part, on investment guidelines that the company will follow to ensure its investment portfolio is in compliance with the rule's requirements.

The collection of information imposed by rule 3a–8 is voluntary because the rule is an exemptive safe harbor, and therefore, R&D companies may choose whether or not to rely on it. The purposes of the information collection requirements in rule 3a–8 are to ensure that: (i) The board of directors of an R&D company is involved in determining whether the company should be considered an investment company and subject to regulation under the Act, and (ii) adequate records are available for Commission review, if necessary. Rule 3a–8 would not require the reporting of any information or the filing of any documents with the Commission.

Commission staff estimates that there is no annual recordkeeping burden associated with the rule's requirements. Nevertheless, the Commission requests authorization to maintain an inventory of one burden hour for administrative purposes.

There are approximately 33,000 R&D companies in the United States.[2] Rule 3a–8 impacts non-manufacturing R&D companies that would fall within the definition of investment company pursuant to section 3(a)(1)(C) of the Act [15 U.S.C. 80a–3(a)(1)(C)].[3] Of the 16,170 non-manufacturing R&D Companies, the Commission believes that companies in scientific R&D services are more likely to use the exemption provided by rule 3a–8.[4] This field comprises companies that specialize in conducting R&D for other organizations, such as many biotechnology companies.[5] It accounts for 18%, or approximately 2910 companies.[6] Given that the board resolutions and investment guidelines will generally need to be adopted only once (unless relevant circumstances change),[7] the Commission believes that all the companies that seek to rely on rule 3a–8 would have adopted their board resolutions and established written investment guidelines in 2003 when the rule was adopted. We expect that newly formed R&D companies would adopt the board resolution and investment guidelines simultaneously with their formation documents in the ordinary course of business.[8] Therefore, we estimate that rule 3a–8 will not create additional time burdens.

Written comments are invited on: (a) Whether the proposed collection of

[1] Rule 3a–8(a)(6). This requirement is modeled on the requirement in rule 3a–2 under the Act that provides a temporary exemption from the Act for transient investment companies. 17 CFR 270.3a–2.

[2] *See* National Science Board, Science and Engineering Indicators 2004 (''NSB Indicators'') (available at *http://www.nsf.gov/statistics/seind04/*).

[3] The Act provides certain exclusions from the definition of investment company for a company that is primarily engaged in a non-investment business. 15 U.S.C. 80a–3(b)(1). For purposes of this PRA analysis, we assume that all manufacturing R&D companies are primarily engaged in the manufacturing industry and, therefore, may rely on the exclusion for companies primarily engaged in a non-investment business. For example, the top two manufacturing R&D companies in terms of dollars spent are Ford Motor Company and General Motors, which are primarily engaged in motor vehicle manufacturing. *See* NSB Indicators, *supra* note 2.

[4] We believe that R&D Companies in this field are most likely to rely on the rule because they often raise and invest large amounts of capital to fund their research and product development and may make strategic investments in other R&D companies to develop products jointly. These activities may cause the R&D companies to fall within the definition of investment company and fail to qualify for statutory exclusions under the Act when using the Commission's traditional analysis. *See* Certain Research and Development Companies, Release No. 26077 (Jun. 16, 2003) [68 FR 37045 (Jun. 20, 2003)], at n. 12 and accompanying text (''Rule 3a–8 Release'').

[5] *See* NSB Indicators, *supra* note 2.

[6] *Id.*

[7] In the event of changed circumstances, the Commission believes that the board resolution and investment guidelines will be amended and recorded in the ordinary course of business and would not create additional time burdens.

[8] In order for these companies to raise sufficient capital to fund their product development stage, we believe they will need to present potential investors with investment guidelines. Investors would want to be assured that the company's funds are invested consistent with the goals of capital preservation and liquidity.

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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: November 16, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6540 Filed 11–25–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 498; File No. 270–435; OMB Control No. 3235–0488.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''Act'') [44 U.S.C. 3501 *et seq.*], the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 498 Under the Securities Act of 1933, Profiles for Certain Open-End Management Investment Companies

Rule 498 of the Securities Act of 1933 [17 CFR 230.498] permits open-end management investment companies (or a series of an investment company organized as a series company, which offers one or more series of shares representing interests in separate investment portfolios) (''funds'') to provide investors with a ''profile'' that contains a summary of key information about a fund, including the fund's investment objectives, strategies, risks and performance, and fees, in a standardized format. The profile provides investors the option of buying fund shares based on the information in the profile or reviewing the fund's prospectus before making an investment decision. Investors purchasing shares based on a profile receive the fund's prospectus prior to or with confirmation of their investment in the fund.

Consistent with the filing requirement of a fund's prospectus, a profile must be filed with the Commission thirty days before first use. Such a filing allows the Commission to review the profile for compliance with Rule 498. Compliance with the rule's standardized format assists investors in evaluating and comparing funds.

It is estimated that approximately 1 initial profile and 252 updated profiles are filed with the Commission annually. The Commission estimates that each profile contains on average 1.25 portfolios, resulting in 1.25 portfolios filed annually on initial profiles and 315 portfolios filed annually on updated profiles. The number of burden hours for preparing and filing an initial profile per portfolio is 25. The number of burden hours for preparing and filing an updated profile per portfolio is 10. The total burden hours for preparing and filing initial and updated profiles under Rule 498 is 3,181, representing a decrease of 1,269 hours from the prior estimate of 4,450. The reduction in burden hours is attributable to the lower number of profiles actually prepared and filed as compared to the previous estimates.

The estimates of average burden hours are made solely for the purposes of the Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: November 17, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6541 Filed 11–25–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27148]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

November 18, 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 November 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 December 13, 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, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

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.

Hilliard Lyons Research Trust [File No. 811–9281]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 31, 2005, applicant transferred its assets to The RBB Fund, Inc., based on net asset value. Expenses of approximately, $448,249 incurred in connection with the reorganization were paid by J.J.B.

Hilliard, W.L. Lyons, Inc., of which Hilliard Lyons Research Advisors, applicant's investment adviser, is a division.

Filing Dates: The application was filed on September 27, 2005, and amended on November 7, 2005.

Applicant's Address: Hilliard Lyons Center, 501 South Fourth St., Louisville, KY 40202.

Centurion Counsel Market Neutral [File No. 811–3257]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 15, 2005, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred approximately $7,000 in expenses in connection with the liquidation.

Filing Dates: The application was filed on September 19, 2005, and amended on November 4, 2005.

Applicant's Address: 365 South Rancho Santa Fe Rd., Suite 300, San Marcos, CA 92078.

Hillier Funds Trust [File No. 811–21568]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 18, 2005, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on September 30, 2005, and amended on November 7, 2005.

Applicant's Address: 36 West 8th St., Suite 210, Holland, MI 49423.

Special Money Market Fund, Inc. [File No. 811–5951]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 11, 2005, applicant transferred its assets to MoneyMart Assets, Inc., based on net asset value. Expenses of $148,000 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Dates: The application was filed on September 2, 2005, and amended on November 7, 2005.

Applicant's Address: Gateway Center Three, 100 Mulberry St., Newark, NJ 07102–4077.

Davis Park Series Trust [File No. 811–10141]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 14, 2005, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $13,044 incurred in connection with the liquidation were paid by Ameristock Corporation, applicant's investment adviser.

Filing Dates: The application was filed on July 29, 2005, and amended on October 27, 2005.

Applicant's Address: 1320 Harbor Bay Parkway, Suite 145, Alameda, CA 94502.

Adhia Funds, Inc. [File No. 811–8775]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 3, 2005, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $10,798 incurred in connection with the liquidation were paid by applicant and its investment adviser, Adhia Investment Advisors, Inc.

Filing Dates: The application was filed on October 11, 2005, and amended on October 28, 2005.

Applicant's Address: 1408 N Westshore Blvd., Suite 611, Tampa, FL 33607.

Combined Penny Stock Fund, Inc. [File No. 811–3888]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On July 28, 2005, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $57,906 incurred in connection with the liquidation were paid by applicant. Applicant has retained $31,462 in cash to cover certain remaining liquidation expenses.

Filing Dates: The application was filed on August 1, 2005, and amended on September 29, 2005.

Applicant's Address: 5373 N. Union Blvd., #100, Colorado Springs, CO 80918.

Investors Mark Series Fund, Inc. [File No. 811–8321]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 13, 2005, applicant made a liquidating distribution to its shareholders, based on net asset value. Investors Mark Advisor, LLC, applicant's investment adviser, paid all expenses incurred in connection with the liquidation.

Filing Date: The application was filed on September 20, 2005.

Applicant's Address: 100 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

Gateway Variable Insurance Trust [File No. 811–10375]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 12, 2005, applicant made a liquidating distribution to all shareholders, based on net asset value. Gateway Investment Advisers, L.P., applicant's investment adviser, paid all expenses incurred in connection with the liquidation.

Filing Dates: The application was filed on June 28, 2005 and amended on October 21, 2005.

Applicant's Address: Rookwood Tower, Suite 600, 3805 Edwards Road, Cincinnati, OH 45209.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6555 Filed 11–25–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52804; File No. SR–Amex–2005–114]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Amex Initial Listing Standards

November 18, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 2, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 10, 2005, the Amex submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Section 102(b) of the Amex Company Guide

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 (''Amendment No. 1'') makes a clarification to the purpose section of the filing and makes changes to Section 101 of the Guide, to reference Section 102(b) of the Guide in the listing provisions.

(''Guide'') to require a minimum market price of $2 per share for issuers seeking to qualify for initial listing pursuant to Initial Listing Standard 3 (Section 101(c)). The Amex also proposes to amend Section 101 of the Guide to include a reference to Section 102(b) in each of the four initial listing standards to clarify that Section 102(b) applies to each initial listing standard listed in Section 101 of the Guide.[4]

Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

American Stock Exchange Company Guide Criteria for Original Listing

Sec. 101. GENERAL

The approval of an application for the listing of securities is a matter solely within the discretion of the Exchange. The Exchange has established certain minimum numerical standards, set forth below. The fact that an applicant may meet the Exchange's numerical standards does not necessarily mean that its application will be approved. Other factors which will also be considered include the nature of a company's business, the market for its products, the reputation of its management, its historical record and pattern of growth, its financial integrity, its demonstrated earning power and its future outlook.

See § 110 for special criteria relating to foreign issuers and Rules 1000, 1000A, and 1200 for rules relating to Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts.

(a) INITIAL LISTING STANDARD 1

(1)–(3) No change.

(4) Stock Price/Market Value of Shares Publicly Held—See Section 102(b).

(b) INITIAL LISTING STANDARD 2

(1)–(4) No change.

(5) Stock Price/Market Value of Shares Publicly Held—See Section 102(b).

(c) INITIAL LISTING STANDARD 3

(1)–(4) No change.

(5) Stock Price/Market Value of Shares Publicly Held—See Section 102(b).

(d) INITIAL LISTING STANDARD 4

(1)–(3) No change.

(4) Stock Price/Market Value of Shares Publicly Held—See Section 102(b).

(e)–(g) No change.

* * * * *

Sec. 102. EQUITY ISSUES

(a) No change.

(b) Stock Price/Market Value of Shares Publicly Held—The Exchange requires a minimum market price of $3 per share for applicants seeking to qualify for listing pursuant to Section 101 (a), (b) or (d), *a minimum market price of $2 per share for applicants seeking to qualify for listing pursuant to Section 101(c),* and $3,000,000 aggregate market value of publicly held shares for applicants seeking to qualify for listing pursuant to Section 101(a). [In certain instances, however, the Exchange may favorably consider listing an issue selling for less than $3 per share after considering all pertinent factors, including market conditions in general, whether historically the issue has sold above $3 per share, the applicant's capitalization and the number of outstanding and publicly-held shares of the issue.]

(c) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex states that an approval of an application for the listing of securities on the Exchange is based on an applicant's ability to satisfy a series of quantitative and qualitative listing standards as evaluated by the Listing Qualifications Department. The Amex represents that the quantitative standards currently provide four alternative approaches for a company to satisfy the Amex's initial listing standards.

For applicants to meet Initial Listing Standards 1, 2 and 4 (Guide Section 101 (a), (b), and (d), respectively), in addition to specified minimum numerical standards, the Exchange requires a minimum market price of $3 per share. Listing Standard 3 currently requires an applicant to meet minimum specified numerical standards but does not require the applicant to meet a minimum market price per share.

The Exchange is proposing to enhance its initial listing quantitative standards to require applicants seeking to qualify under Initial Listing Standard 3 pursuant to Section 101(c) of the Guide to have a minimum market price of $2 per share. Accordingly, the Exchange is proposing to amend Section 102(b) to incorporate this requirement. The Exchange also proposes to amend Section 101 of the Guide to include a reference to Section 102(b) in each of the four initial listing standards to clarify that Section 102(b) applies to each standard listed in Section 101 of the Guide.[5]

In addition, the Exchange proposes to delete the last sentence of Section 102(b) of the Guide. The Exchange states that this provision, which has been in place for many years, gives the Exchange the discretion under certain circumstances to consider listing an issue that qualified under Initial Listing Standards 1, 2 or 4 even if the issue's share price is less than $3. The Exchange represents that this provision was meant to cover the situation in which an applicant issuer meets all of the initial listing standards but experiences a decline in share price to below $3 per share just before listing. In light of the current and proposed configuration of the initial listing standards, the Exchange believes that this provision is no longer necessary or appropriate.[6]

2. Statutory Basis

The Exchange believes the proposal, as amended, is consistent with Section 6(b) of the Act[7], in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating 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; and the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related

[4] *See* Amendment No. 1, *Id.*

[5] *See* Amendment No. 1, *supra* note 3.

[6] *Id.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

to the purpose of the Act or the administration of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change, as amended, will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange on this proposal, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2005–114 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–2005–114. 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 File Number SR–Amex–2005–114 and should be submitted on or before December 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6537 Filed 11–25–05; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52798; File No. SR–CBOE–2005–46]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 2 and 4 Thereto Relating to the Removal of Agency Responsibilities From Designated Primary Market-Makers and the Establishment of PAR Officials

November 18, 2005.

I. Introduction

On June 10, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') 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 amend its rules relating to Designated Primary Market-Makers (''DPMs'') to eliminate the DPM's responsibility to act as agent in the options in which it is registered as the DPM on the Exchange. Instead, the Exchange has proposed to designate a CBOE employee or independent contractor (''PAR Official'') to be responsible for assuming the responsibility for handling certain orders currently undertaken by the DPMs in their allocated options classes, including the operation of the PAR workstation. The Exchange filed Amendment No. 1 with the Commission on July 1, 2005.[3] The amended proposal was published for comment in the **Federal Register** on July 19, 2005.[4] The Commission received one comment letter regarding the proposal.[5] The Exchange filed Amendment No. 2 with the Commission on October 6, 2005.[6] The Exchange filed Amendment No. 3 with the Commission on November 17, 2005, and withdrew Amendment No. 3 on November 18, 2005. The Exchange filed Amendment No. 4 with the Commission on November 18, 2005.[7] This order approves the proposed rule change, as amended. In addition, the Commission seeks comment from interested persons on Amendments No. 2 and 4.

II. Description of Proposed Rule

Under its current rules, a DPM is defined as a ''member organization that is approved by the Exchange to function in allocated securities as a Market-Maker * * *, as a Floor Broker * * *, and as an Order Book Official * * *.[8] CBOE Rule 8.85 further sets out the DPM's obligations regarding agency transactions. According to the CBOE, its uniform practice has been to require DPMs to act as Floor Brokers for the classes of options assigned to them. Accordingly, all DPMs on CBOE presently act as both agent and principal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superceded the original rule filing in its entirety.

[4] *See* Securities Exchange Act Release No. 52017 (July 12, 2005), 70 FR 41453 (''Notice'').

[5] *See* e-mail from Margaret Wiermanski, Chief Operations and Compliance Officer, CTC, LLC, dated July 29, 2005 (''CTC Letter'').

[6] *See* Partial Amendment, submitted by James Flynn, Assistant Secretary, CBOE (''Amendment No. 2''). In Amendment No. 2, CBOE proposed an additional change to CBOE Rule 6.8 to conform the text of this rule with the proposal.

[7] *See* Partial Amendment, submitted by James Flynn, Assistant Secretary, CBOE (''Amendment No. 4''). In Amendment No. 4, CBOE proposed additional changes to CBOE Rules 6.45, 6.45A, 6.45B, 8.94, and 17.50 to conform the text of these rules with the proposal.

[8] *See* CBOE Rule 8.80.

in their allocated options on the Exchange.

The CBOE has now determined to eliminate a DPM's agency duties, including the responsibilities associated with operating the PAR workstation. Specifically, CBOE has proposed to amend its rules to remove a DPM's obligation to act as an agent or Floor Broker in its allocated securities on the Exchange. In a DPM's place, the Exchange has proposed to designate a PAR Official who will be responsible for handling certain orders in the same manner as they were formerly handled by the DPM. In particular, the PAR Official will operate the PAR workstation, maintain the public customer limit order book for its assigned non-Hybrid option classes, execute orders that are sent to the PAR workstation or that are placed on the limit order book, display eligible limit orders, and undertake the obligations related to handling certain Linkage Orders.[9]

The Exchange has proposed to amend its definition of ''Principal Acting as Agent ('P/A') Order'' to remove the requirement that a Market-Maker act as an agent for the unexecuted customer order related to the P/A Order.[10] The CBOE proposed this change to conform to its proposal to remove the DPM's agency responsibilities. The proposed rule change also assigned certain obligations to the PAR Officials related to the handling of Linkage Orders, including using a DPM's account to route P/A Orders, Principal Orders on behalf of orders in the custody of the PAR Official that are for the account of a broker-dealer, and Satisfaction Orders to other participants in the Linkage Plan. In addition, PAR Officials would have the obligation to handle all Linkage Orders or portions of Linkage Orders received by the Exchange that are not automatically executed, and to use the DPM's account to fill a Satisfaction Order that results from a Trade-Through that is effected on the Exchange by a PAR Official. The proposed rule change also requires DPMs to provide prior written instructions to the PAR Officials regarding routing Linkage Orders and handling responses to Linkage Orders.

The CBOE has proposed measures designed to ensure the independence of PAR Officials from Exchange members. Specifically, the PAR Official would be required to be an Exchange employee or independent contractor whose compensation would be determined, and paid, solely by CBOE. Further, the PAR Official would be prohibited from having an affiliation with any CBOE member that acts as a Market-Maker on the Exchange.

Because the DPM would no longer be operating the PAR workstation, CBOE proposed to amend its Rule 8.51, which defines when a DPM's firm quote obligation attaches for orders received over PAR. Interpretation and Policy .10 to CBOE Rule 8.51 currently provides that, in the case of orders received at a PAR workstation in a DPM trading crowd, the DPM's firm quote obligation attaches at the time the order is received on the PAR workstation. CBOE has proposed to clarify that firm quote obligations attach to all responsible brokers or dealers in the trading crowd, which may include the DPM, at such time as when the PAR Official announces the order to the crowd. The Exchange has proposed this clarification in light of the fact that DPMs will no longer represent orders as Floor Broker from the instant such orders are received on the PAR workstation.

In Amendment No. 2, the Exchange has proposed to amend subsection (d)(vi) of Rule 6.8 (RAES Operations) to indicate that: (1) DPMs no longer would be responsible for handling or representing orders that are routed to a CBOE PAR workstation or to the Exchange's ''Live Ammo'' functionality, and (2) to the extent that a PAR Official would be taking such responsibilities, the PAR Official will be required to use his or her best efforts to attempt to ensure that members receive an allocation of any incoming orders for up to their disseminated size.

In Amendment No. 4, the Exchange has proposed to amend CBOE Rule 8.93 (e-DPM Obligations) to exclude from the e-DPM's obligations the proposed obligation of DPMs to allow a PAR Official to use the DPM's account to send and respond to linkage orders.[11] The Exchange represents that PAR Officials will use only DPM accounts, not e-DPM accounts, to generate linkage orders and responses as required by proposed CBOE Rule 7.12(e).[12] The Exchange also has proposed conforming changes to CBOE Rules 6.45 (Priority of Bids and Offers—Allocation of Trades), 6.45A (Priority and Allocation of Equity Option Trades on the CBOE Hybrid System), 6.45B (Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System), 8.93, and 17.50 (Imposition of Fines for Minor Rule Violations) to reflect (1) that customer orders currently represented by DPMs would be represented by PAR Officials under the proposal and (2) the proposed removal of DPMs' agency obligations under CBOE Rule 8.85(b).

The text of the changes proposed in Amendments No. 2 and 4 is available on CBOE's Web site (*http://www.cboe.org/legal/*), at CBOE's office of the secretary, and at the Commission's Public Reference Room.

III. Summary of Comments

The Commission received one comment letter on the proposed rule change.[13] The commenter, a member firm of the Exchange, endorsed the proposed rule filing and agreed with its purpose and intent. However, the commenter suggested that the proposal be initially approved on a three-month pilot basis to provide the Exchange, its members, and its participants with ''some working experience'' before the rule is permanently approved. The commenter wrote that certain ''basic operational considerations'' related to the implementation of the proposed rule change are still unknown—for example, the mechanics of how Linkage Orders will be booked into the DPM's account by the PAR Official, and how the new procedures would affect CBOE's membership rules and compliance by CBOE with the consolidated options audit trail system (''COATS'') regulations. The commenter suggested that a pilot period would make any required modification to the rules administratively easier to accomplish.

The CBOE responded to the commenter's concerns related to the implementation and operation of the PAR Official program.[14] The CBOE emphasized the long-term goals of the PAR Official program were promoted by this filing because it would ''eliminat[e] the risks associated with a DPM acting as both principal and agent * * *.'' The CBOE suggested that a pilot program could ''frustrate these efforts'' and create ''uncertainty'' regarding the status of the DPM program. The Exchange also

[9] *See infra* note 10.

[10] The proposed rule change would amend CBOE Rule 6.80(12) to provide that ''Linkage Order'' means an Immediate or Cancel Order routed through the Linkage as permitted under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan''). Amended Rule 6.80(12) would change the definition of ''Principal Acting as Agent ('P/A') Order'' to be ''an order for the principal account of a Market-Maker (or equivalent entity on another Participant Exchange that is authorized to represent Customer orders) reflecting the terms of a related unexecuted Customer order.''

[11] *See* Proposed CBOE Rule 8.85(a)(xiv).

[12] Telephone conversation between James Flynn, Assistant Secretary, CBOE, and Tim Fox, Special Counsel, and Nathan Saunders, Special Counsel, Division of Market Regulation (''Division''), Commission, on November 17, 2005.

[13] *See* CTC Letter, *supra* note 5.

[14] *See* E-mail from James Flynn, Attorney II, CBOE to Jonathan G. Katz, Secretary, Commission, dated September 1, 2005.

represented that it believed a better mechanism to resolve the complications that arise as a result of the proposed rule change would be for the CBOE to address the problems promptly, either through additional rule filing(s), systems enhancements, or operation modifications. In addition, the CBOE pointed out that the proposal already provides a three-month period following approval for the CBOE and its members to fully implement the PAR Official program in all DPM trading stations, which the CBOE believes should allow it to address any implementation issues that may arise as a result of the proposed rule change.

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,[16] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

With this proposal, CBOE seeks to eliminate the conflicts of interest that currently exist for their DPMs. Specifically, DPMs today trade for their own accounts as Market-Makers and act as agents for certain orders in their allocated options. CBOE has proposed to eliminate the DPM's obligation and permission to act as agent.[17] The Commission believes that eliminating a DPM's obligation and permission to act as agent will promote just and equitable principles of trade and protect investors and the public interest.[18]

CBOE has proposed that orders that currently are represented by DPMs as agent be handled by Exchange employees known as PAR Officials and would require that their compensation be determined and paid exclusively by the Exchange. CBOE has also proposed to prohibit affiliations between PAR Officials and CBOE Market-Makers to ensure the PAR Officials are independent from Exchange Market-Makers' interests. The restrictions will mitigate potential conflicts of interest.

Pursuant to the proposed rule change, PAR Officials will undertake comparable responsibilities currently held by DPMs with respect to customer orders. For example, the PAR Official must use due diligence to execute the orders placed in his or her custody at the best prices available to him or her under the CBOE rules. In addition, PAR Officials will assume the obligations related to displaying public customer orders that improve CBOE's disseminated quote by maintaining Autobook, the Exchange's automated limit order display facility, and keeping it active. Accordingly, the Commission believes that the CBOE's proposal should ensure that customers' orders continue to be represented and handled in a timely fashion on the Exchange.

The PAR Officials would assume responsibilities related to Linkage Orders. Specifically, a PAR Official would use a DPM's account to route P/A Orders, Principal Orders on behalf of orders in the custody of the PAR Official that are for the account of a broker-dealer, and Satisfaction Orders to other participants in the Linkage Plan based on prior written instructions provided by the DPM to the PAR Official.[19] The written instructions provided by the DPM will also include direction as to how the PAR Official should handle responses to Linkage Orders routed to other Linkage Participants that are not responded to in a timely manner.[20] The PAR Official will also use the DPM's account to fill any Satisfaction Order that results from a Trade-Through that is effected on the Exchange by PAR Officials. Finally, the PAR Official will handle all Linkage Orders or portions of Linkage Orders received by the Exchange that are not automatically executed. The Commission believes that the proposed rules governing the handling of Linkage Orders by the PAR Official and the use of the DPMs' accounts for routing Linkage Orders is consistent with the promotion of a national market system because, among other things, it will allow P/A Orders that reflect the terms of CBOE customer orders to be generated by CBOE and routed to other Linkage Participant markets, which will allow a CBOE customer order to receive possible execution at a price better than the price disseminated by CBOE.

Pursuant to Section 19(b)(2) of the Act,[21] the Commission finds good cause for approving Amendments No. 2 and 4 prior to the thirtieth day after their publication in the **Federal Register.** In Amendment No. 2, CBOE has proposed an additional change to CBOE Rule 6.8(d)(vi). The additional change provides that DPMs no longer would be responsible for handling or representing RAES orders that are routed to the PAR workstation or to the Exchange's ''Live Ammo'' functionality when CBOE's disseminated quote is a manual quote (and thus is not eligible for automatic execution against the RAES order). This responsibility will belong to the PAR Official following implementation of the proposed rule change. In Amendment No. 4, CBOE has proposed additional conforming changes to CBOE Rules 6.45, 6.45A, 6.45B, 8.93, and 17.50 in order to render these rules consistent with the proposal as set forth in the Notice published in the **Federal Register** on July 19, 2005.

The Commission finds good cause to accelerate approval of the amended proposal because the changes proposed in Amendments No. 2 and 4 are consistent with the Exchange's broader proposal to remove a DPM's responsibility to act as agent for orders received on the PAR workstation and instead to assign this responsibility to the PAR Official.

[15] 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).

[16] 15 U.S.C. 78f(b)(5).

[17] The Commission notes that CBOE Rule 8.85(b), as amended, will no longer permit a DPM to act as an agent for customer orders. However, to the extent that a DPM nevertheless undertakes to represent a customer's order in violation of CBOE Rule 8.85(b), the DPM will assume all the duties and liabilities of an agent to a principal during the course of such representation. *See* Section 1 of the Restatement, 2d of Agency.

[18] In addition, CBOE Rule 4.18, Prevention of the Misuse of Material, Nonpublic Information, will have the effect of mitigating conflicts of interest that might arise when an affiliate of the DPM acts as agent for a customer order in one of the DPM's assigned options classes. CBOE Rule 4.18 requires that every member ''shall establish, maintain and enforce written policies and procedures reasonably designed * * * to prevent the misuse * * * of material, nonpublic information by persons associated with such member.'' The Exchange represented that this requirement will have the effect of restricting the sharing of material, nonpublic information between the DPM and any affiliate of the DPM who acts as agent for a customer order. Telephone conversation between James Flynn, Assistant Secretary, CBOE, and Kelly Riley, Assistant Director, and Nathan Saunders, Special Counsel, Division, Commission, on October 21, 2005.

[19] The Commission today is also granting the CBOE a conditional exemption from the requirement in Rule 608(c) of Regulation NMS promulgated under the Act that the CBOE comply with and enforce compliance by its members with certain provisions of the Linkage Plan to facilitate the establishment of PAR Officials and their handling of Linkage Orders. *See* Letter from Robert L.D. Colby, Acting Director, Division of Market Regulation to Joanne Moffic-Silver, General Counsel, CBOE, dated November 18, 2005.

[20] CBOE Rule 6.81(d)(1) specifically addresses the situations in which a CBOE member does not receive a response to a P Order or P/A Order within 20 seconds of sending the order.

[21] 15 U.S.C. 78s(b)(2).

V. Solicitation of Comments Concerning Amendments No. 2 and 4

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 2 and 4, including whether they are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–46. 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–CBOE–2005–46 and should be submitted on or before December 19, 2005.

VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (File No. SR–CBOE–2005–46), as amended, is approved, and that Amendments No. 2 and 4 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6559 Filed 11–25–05; 8:45 am]

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[22] 15 U.S.C. 78s(b)(2).

[23] CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52808; File No. SR–NFA–2005–01]

Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Amendments to the Interpretive Notice to NFA Compliance Rule 2–9: Enhanced Supervisory Requirements.

November 18, 2005.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–7 under the Exchange Act,[2] notice is hereby given that on September 19, 2005, National Futures Association (''NFA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

NFA also submitted the proposed rule change to the Commodity Futures Trading Commission (''CFTC'') on September 19, 2005 for approval. The CFTC has not yet given such approval.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

Section 15A(k) of the Exchange Act[3] makes NFA a national securities association for the limited purpose of regulating the activities of Members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.[4] NFA's Interpretive Notice entitled ''Compliance Rule 2–9: Enhanced Supervisory Requirements'' (''Notice'') applies to all Members who meet the criteria and could apply to Members registered under Section 15(b)(11).

The Notice requires a Member to adopt certain enhanced supervisory procedures (''Requirements'') if its sales force includes a specified number of associated persons (''APs'') who have worked at Disciplined Firms. NFA's Special Committee to Study Customer Protection Issues recently recommended changes to the Notice to resolve some emergent loopholes in the Requirements and further prevent abusive sales practices. The Board's changes:

- Automatically reimpose the Requirements on any firm that, having already completed a term under the Requirements, becomes subject to an NFA or CFTC enforcement action alleging sales practice abuses;
- Change the current obligation under the Requirements so that a firm may petition to have the Requirements lifted or modified after two years rather than automatically terminating;
- Add a provision designed to address issues related to firms avoiding the Requirements by making sham changes to entities and personnel when they become subject to the Requirements;
- Include listed principals who have previously worked for Disciplined Firms in the population used to calculate whether a Member firm has triggered an obligation to operate under the Requirements; and
- Exclude APs who worked at Disciplined Firms for less than sixty days more than five years ago from having to be counted for purposes of calculating whether a Member who hires such an individual is required to adopt the Requirements.

Below is the text of the proposed amendments to the Notice. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

Interpretive Notice

Compliance Rule 2–9: Enhanced Supervisory Requirements

Over the years, NFA's Board of Directors has adopted strict and effective rules to prohibit deceptive sales practices, and those rules have been vigorously enforced by NFA's Business Conduct Committees. The Board notes, however, that by their very nature, enforcement actions occur after the customer abuse has taken place. The Board recognizes that NFA's goal must be not only to punish such deception of customers through enforcement actions

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 15 U.S.C. 78o–3(k).

[4] 15 U.S.C. 78o(b)(11).

but to prevent it, or minimize its likelihood, through fair and effective regulation.

One NFA rule designed to prevent abusive sales practices is NFA Compliance Rule 2–9. Subsection (a) of this rule places a continuing responsibility on every Member to supervise diligently its employees and agents in all aspects of their futures activities, including sales practices. Although NFA has not attempted to prescribe a set of supervisory procedures to be followed by all NFA Members, NFA's Board of Directors believes that Member firms which are identified as having a sales force that has received questionable training in sales practices should be required to adopt specific supervisory procedures designed to prevent sales practice abuse. Subsection (b) authorizes the Board of Directors to require Members, which meet certain criteria established by the Board, to adopt specific supervisory procedures designed to prevent abusive sales practices. Subsection (b) covers all activities regulated by NFA, including the off-exchange retail forex activities of Members subject to NFA Compliance Rule 2–36.

The Board believes that in order for the criteria used to identify firms subject to the enhanced supervisory requirements to be useful, those criteria must be specific, objective and readily measurable. The Board also believes that any supervisory requirements imposed on a Member must be designed to quickly identify potential problem areas so that the Member will be able to take corrective action before any customer abuse occurs. The purpose of this Interpretive Notice is to set forth the criteria established by the Board and the enhanced supervisory procedures which are required of firms meeting these criteria.

In developing the criteria, the Board concluded that it would be helpful to review Member firms which had been closed through enforcement actions taken by the CFTC or NFA for deceptive sales practices. The Board's purpose was to identify factors common to these Member firms and probative of their sales practice problems, which could be used to identify other Member firms with potential sales practice problems.

One factor identified by the Board as common to these firms and directly related to their sales practice problems is the employment history and training of their sales forces. For many of these Members, a significant portion of their sales force was previously employed and trained by one or more of the other Member firms closed for fraud. The Board believes that the employment history of a Member's sales force *and principals* is a relevant factor to consider in identifying firms with potential sales practice problems. If a Member firm is closed by NFA or the CFTC for fraud related to widespread telemarketing or promotional material problems or a firm is closed by NASD or the SEC for fraud related to its sales practices regarding security futures products as defined in Section 1a(32) of the Commodity Exchange Act (''Act''), it is reasonable to conclude that the training and supervision of its sales force was wholly inadequate or inappropriate. It is also reasonable to conclude that an AP who received inadequate or inappropriate training and supervision may have learned improper sales tactics, which he will carry with him to his next job. Therefore, the Board believes that a Member firm employing such a sales force must have stringent supervision procedures in place in order to ensure that the improper training its APs have previously received does not taint their sales efforts on behalf of the Member.

The Board has determined that a Member will be required to adopt the specific supervisory procedures over its sales practice activities if:

- For firms with less than five APs, 2 or more of its APs have been employed by one or more Member firms which have been disciplined by NFA or the CFTC (or one or more firms disciplined by any securities industry self-regulatory organization or the SEC in matters involving security futures products) for sales practice fraud (''Disciplined Firms'');
- For firms with at least 5 but less than 10 APs, 40 percent or more of its APs have been employed by one or more Disciplined Firms;
- For firms with at least 10 but less than 20 APs, four or more of its APs have been employed by one or more Disciplined Firms; or
- For firms with at least 20 APs, 20 percent or more of its APs have been employed by one or more Disciplined Firms.

The Board also takes note that there have been instances in which Members and Associates have subverted the Board's purpose in imposing the enhanced supervisory procedures by closing a firm once it qualifies for those procedures and opening another firm or firms that have a mix of APs that does not meet the criteria for adopting the procedures. The new firms typically have APs who have worked for Disciplined Firms and who worked at the original firm, but they are redistributed so as to keep the AP mix below the threshold for becoming subject to the enhanced supervisory procedures. This strategy deprives the very APs whose questionable training backgrounds gave rise to the creation of the enhanced supervisory procedures of the benefits of those procedures. Therefore, the Board has determined to further ensure that the benefits of the enhanced supervisory procedures are applied where they are of the greatest effect. Once a Member firm triggers the aforementioned criteria and becomes obligated to adopt the enhanced supervisory procedures, any other Members of which the principals of that Member firm are, or become, principals must also adopt the enhanced supervisory procedures or seek a waiver therefrom. In addition, for purposes of determining whether a Member will be required to adopt the enhanced supervisory procedures, principals of a firm, who are not also APs of that firm and who have been previously employed as an AP by one or more Disciplined Firms, shall be counted with the firm's APs in determining whether the firm meets the aforementioned criteria.

Additionally, for purposes of determining whether a futures commission merchant (''FCM'') Member firm meets this requirement, an FCM and its guaranteed introducing brokers (''GIBs'') will be considered a single firm. Therefore, for FCMs with GIBs, the APs of its GIBs will be treated as APs of the FCM for determining whether the FCM meets the requirements. If the FCM Member firm meets the requirements, then the FCM and all its GIBs shall be required to adopt the supervisory procedures specified herein. Of course, individual FCMs or GIBs will be required to adopt the enhanced supervisory procedures provided the FCM or GIB meets the requirements on its own.

The Board recognizes that there is a group of APs who worked at Disciplined Firms for only a short period of time many years ago and who have not worked at any Disciplined Firm since. The Board's review of the employment and disciplinary histories of such individuals suggests that APs who served a very brief tenure with Disciplined Firms more than [10] *five* years in the past do not raise the same concerns regarding their previous supervision and training that are raised by APs who have worked at Disciplined Firms for longer periods or at a more recent point in time. Therefore, the Board has determined that APs who have been previously employed by Disciplined Firms for a cumulative total of less than 60 days and who, in addition, have not been employed by

any Disciplined Firm during the [10] *5* years preceding the determination of whether a Member firm is required to employ the enhanced supervisory procedures established in this Interpretive Notice shall not be counted for purposes of calculating whether the composition of a firm's sales force triggers enhanced supervisory requirements.

For purposes of this requirement, a Disciplined Firm is defined very narrowly to include those firms that meet the following three criteria:

1. the firm has been formally charged by either the CFTC or NFA with deceptive telemarketing practices or promotional material;

2. those charges have been resolved; and

3. the firm has been permanently barred from the industry as a result of those charges.

In addition, a Disciplined Firm shall be defined to include any broker-dealer that, in connection with sales practices involving the offer, purchase, or sale of any security futures product as defined in Section 1a (32) of the Act has been expelled from membership or participation in any securities industry self-regulatory organization or is subject to an order of the SEC revoking its registration as a broker-dealer.

Attached is a list of firms currently meeting the definition of a Disciplined Firm. Although this list is current as of the date of this Interpretive Notice, NFA [will provide] *provides* Members with *an* updated [lists] *list* [as necessary] *on its website at www.nfa.futures.org.*

Any Member firm meeting these criteria will be required either to operate pursuant to a guarantee agreement or maintain an adjusted net capital of at least $250,000 for the entire period during which the Member is required to tape record its sales solicitations. Any Member opting to maintain the higher level of adjusted net capital would also be subject to the financial record-keeping and reporting requirements applicable to FCMs. Eligible guarantor futures commission merchants are those that meet the eligibility requirements for executing a Supplemental Guarantor Certification Statement pursuant to NFA Registration Rule 504(a)(2)(B). The Board believes that requiring these Members to operate pursuant to a guarantee agreement will likely improve the overall level of supervision at these firms.

Those Member firms meeting the criteria will be required to tape record all telephone conversations that occur between their APs and both existing and potential customers, including existing and potential retail forex customers of Members subject to NFA Compliance Rule 2–36. The Board believes that tape recording these conversations provides these Members with the best opportunity to monitor closely the activities of their APs and also provides these Members with complete and immediate feedback on each AP's method of soliciting customers. Members *that are required to tape their conversations* [meeting the criteria must tape record these conversations for a period of two years and] must retain such tapes for a period of five years from the date each tape is created and the tapes shall be readily accessible during the first two years of the five-year period. In retaining the tape recorded conversations, Member firms must catalog the tapes by AP and date. Additionally, any Member firm meeting the criteria must require all its APs to maintain a daily log for sales solicitations which reflects at a minimum the identity of each customer or prospective customer the AP spoke with on each day. A Member firm must be able to promptly produce, upon request from NFA or the CFTC, all conversations relating to a specific AP, and only that AP, for a given date.

In addition, [for a period of two years,] those Member firms meeting the criteria will be required to file all promotional material, as defined in NFA Compliance Rule 2–29(i), with NFA at least 10 days prior to its first use.

Those Members meeting the criteria shall have written supervisory procedures that include the titles, registration status and locations of the firm's supervisory personnel as these relate to the firm's commodity futures business, retail forex business, and applicable securities laws and regulations for the trading of security futures products. Member firms shall also maintain on an internal record the names of all persons who are designated as supervisory personnel and the dates for which the designation is or was effective. Additionally, a Member meeting the criteria shall by the 30th day of the month following the end of each calendar quarter file with NFA's Compliance Department a report relating to the Member firm's compliance with the supervisory requirements contained herein. Member firms shall retain the internal record and report(s) for a period of five years, the first two years in an easily accessible place.

If an NFA Business Conduct Committee disciplinary proceeding or Commodity Futures Trading Commission enforcement proceeding has been filed against a Member firm required to adopt these enhanced supervisory procedures, then the enhanced supervisory procedures will remain in effect for the applicable time period specified or until after the disciplinary or enforcement proceeding is closed and all appeals are completed or the time for appeal has passed without an appeal being filed or perfected, whichever occurs latest. *In addition, any Member that: has previously been required to adopt the enhanced supervisory procedures; has, in fact, fulfilled that requirement either by adopting the enhanced supervisory procedures for a prescribed period or by receiving a full or partial waiver from the enhanced supervisory procedures from the Telemarketing Procedures Waiver Committee; and subsequently becomes subject to a Commodity Futures Trading Commission or NFA enforcement or disciplinary proceeding alleging deceptive sales practices, shall, within 30 days of being served with notice of the action, initiate all of the enhanced supervisory procedures and may not seek a waiver therefrom. This obligation shall continue until after the disciplinary or enforcement proceeding is closed and all appeals are completed or the time for appeal has passed without an appeal being filed or perfected.* Member firms shall be required to retain tapes for the five-year period as specified above.

Any Member required to adopt these enhanced procedures may seek a waiver of the enhanced supervisory requirements *by filing a petition with the Telemarketing Procedures Waiver Committee within 30 days of the date of being notified by NFA that it is required to adopt the enhanced procedures.* NFA may grant such a waiver upon a satisfactory showing that the Member's current supervisory procedures provide effective supervision over its employees, including enabling the Member to identify potential problem areas before customer abuse occurs. Additionally, if a Member meets the criteria and trades security futures products, then the Member firm must also make a satisfactory showing that the Member's supervisory procedures ensure compliance with all applicable securities laws and regulations. *Should a Member fail to file a petition seeking a waiver within 30 days or should it file a petition that is denied by the Telemarketing Procedures Waiver Committee, either in whole or in part, the Member may not petition for a full or partial waiver again until at least two years have elapsed since the Member adopted the required enhanced procedures.*

Some of the factors that the three-member Waiver Committee may

consider in evaluating a waiver request include:

- The total number of APs sponsored by the Member;
- Number of branch offices and GIBs operated by the Member;
- The experience and background of the Member's supervisory personnel;
- The number of the Member's APs who had received training from firms which have been closed for fraud, the length of time those APs worked for those firms and the amount of time which has elapsed since those APs worked for the disciplined firms;
- The results of any previous NFA examinations; and
- The cost effectiveness of the taping requirement in light of the firm's net worth, operating income and related telemarketing expenses.

Conditions that the Telemarketing Procedures Waiver Committee shall impose on any Member to which it grants a full or partial waiver include requirements that the firm: Notify NFA of any action charging the firm with a violation of Commodity Futures Trading Commission or Self Regulatory Organization (''SRO'') regulations or rules; notify NFA of any customer complaint involving sales practices or promotional material; not change ownership; not have any material deficiencies noted during any SRO examination; not hire additional APs from Disciplined Firms; execute a written acknowledgement that the firm understands the conditions of the waiver; and may include any other conditions deemed by the Committee to be appropriate in furtherance of the effectiveness of the enhanced supervisory procedures. Violation of any of those conditions may serve as cause for the Telemarketing Procedures Waiver Committee to review and amend or revoke the waiver.

A Member firm that does not comply with this Interpretive Notice will violate NFA Compliance Rule 2–9(b) and will be subject to disciplinary action.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from Members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. NFA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Reimposing the Requirements on Members That Have Previously Satisfied an Obligation to Abide by Those Requirements and are Subsequently Charged in a CFTC or NFA Enforcement Action

In 1996, NFA's Board amended the Notice to provide that, if a Member that is currently subject to the Requirements becomes subject to a CFTC or NFA enforcement proceeding, the Requirements will remain in place for two years or until after the disciplinary or enforcement proceeding is concluded, whichever is longer. This provision does not, however, apply to Members that have already served full two-year tenures under the Requirements when one of those firms is subsequently charged in an enforcement action by the CFTC or NFA.

The practical effect of the current system is that some Members, with a number of APs from Disciplined Firms, that are charged by the CFTC or NFA in actions alleging fraudulent sales practices have a significant window of time during the pendency of the action to continue soliciting the public without any requirement to adopt additional prophylactic measures such as taping. Of course, in appropriate cases, prophylactic measures may be imposed as part of the ultimate resolution of the CFTC's or NFA's action, but it can take many months, or even years in cases that go through multiple layers of appeals, to resolve such actions.

There are at least three current NFA Members that served full terms under the Requirements and were subsequently charged in enforcement proceedings. It is worth noting that each of those firms still retains a sales force with histories at Disciplined Firms such that they would require the adoption of the Requirements but for the fact that they have already served the term of their obligation under the Notice. In fact, at one time, one of these firms actually featured its purported immunity from further taping requirements as an inducement in a recruitment advertisement contained in a South Florida newspaper.

A review of one firm's history illustrates the differences in the operations of the present system and the system being proposed. This firm has been an introducing broker (''IB'') NFA Member since August 1994. The NFA required the Member to adopt the Requirements from February 1995 through February 1997, when it was automatically discharged of the Requirements.

NFA then issued a Complaint alleging deceptive sales practices against the firm in April 1998. A settled Decision was issued at that same time which, among other penalties, required the firm to tape all solicitations from April 1998 through April 2000. NFA issued a second deceptive sales practice Complaint against the firm in January 2002, which was resolved in March 2003.

Because the firm had already fulfilled its obligation under the Notice from 1995 to 1997, it was not required under the current system to tape conversations with customers during the pendency of NFA's 2002 Complaint. This gave the firm a 14-month window to solicit the public without any obligation under the Notice to adopt the enhanced supervisory procedures—including taping. Incidentally, during this time, the firm continued to have a mix of APs that otherwise would have triggered the Requirements. The proposed amendments to the Notice would have required the firm to observe all of the Telemarketing Requirements, including taping all customer solicitations, from the time that the 2002 Complaint was initiated until that Complaint was completely resolved in March 2003.

The guiding principle in creating and refining the Requirements has always been to improve the overall level of supervision at those few Member firms which are likely to cause sales practice problems. When a firm that has already operated under the Requirements for two years because of the questionable backgrounds of its APs subsequently becomes subject to an NFA or CFTC enforcement action for sales practice abuses, there is a clear indication that the firm is, indeed, part of the group that is likely to cause sales practice problems and that it is prudent to require the firm to improve its level of supervision.

The proposed amendments to the Notice provide that any firm that has previously been required to abide by the Requirements but has fulfilled its obligation—either by abiding by the Requirements under the Notice as it currently stands or by successfully petitioning the Telemarketing Procedures Waiver Committee (''Waiver Committee'') to have the Requirements lifted or modified—would again become subject to the Requirements during the

pendency and through appeals of a new CFTC or NFA enforcement action.

b. Requiring Telemarketing Firms To Abide by the Telemarketing Requirements Until They are Granted a Complete or Partial Waiver by the Telemarketing Procedures Waiver Committee

Currently, the obligation to abide by the enhanced procedures runs for two years, at which time it terminates automatically in most circumstances. The proposed amendments make it more likely that firms that continue to pose problems would remain subject to the Requirements for longer than the current two-year tenure provided for in the Notice. The modification puts the burden on Member Firms triggering the criteria to demonstrate that a waiver from the Requirements is warranted after two years rather than automatically discharging the obligation to abide by the Requirements once the two years has passed.

The amendments also provide that a Member firm has 30 days to seek a waiver from the Waiver Committee after it first employs an AP mix that would trigger the Requirements.[5] If the Waiver Committee denies the initial petition or no petition is filed, the firm would not be eligible to petition for a waiver again until it had served a full two years under the Requirements. Any waiver would be subject to conditions that, if violated, could subject the firm to revocation of the waiver by the Waiver Committee.[6] This additional component gives the Waiver Committee the flexibility to revisit the issue of whether a waiver is still warranted when there is a material change in the firm's organization or regulatory status.

c. Combating Sham Transactions and Including Principals Who Have Worked at Disciplined Firms in Calculating Whether a Member Firm has Qualified Under the Requirements

The principals of several firms that have triggered the Requirements have avoided them by simply closing their firms and opening other firms that have a mix of APs that do not trigger an obligation to abide by the Requirements. The new firms typically have APs from the closed firm who have worked at Disciplined Firms, but their ratios to the overall AP population of the new firms are below the triggering point for imposing the Requirements.

For example, one firm, which had been an NFA Member IB since 1987, met the Requirements in March 2004. One particular individual had been the firm's principal and an AP of the firm since May 1987. The firm petitioned the Waiver Committee for a complete waiver from any obligation to abide by the Requirements. Although that Waiver Committee gave the firm a partial waiver by reducing the firm's required minimum adjusted net capital from $250,000 to $100,000, it did not waive the taping or other obligations.

Rather than having the firm abide by the Requirements, the individual simply withdrew the firm from NFA membership and created two new firms. Neither of those firms triggered the Requirements because the individual kept their AP populations below the triggering points by judiciously splitting APs from Disciplined Firms between the two firms. In addition, while the individual is a principal of both firms, he did not register as an AP of either of them. By so doing, he was able to avoid being personally counted as an AP from a Disciplined Firm for purposes of determining whether either firm had an AP population that triggered the Requirements.

The firm's use of a sham reorganization to avoid triggering the Requirements is not unique. NFA is aware of several other firms that have used similar tactics to avoid the Requirements.

NFA has developed a twofold approach to combat sham reorganizations and transfers designed to avoid the Requirements. First, once a firm has triggered the Requirements, then any other firms of which the principals of the qualifying firm are also principals would become subject to the Requirements.

Second, individuals who are listed principals, but who are not APs of the firm, will be included in the calculation for purposes of determining whether a firm has triggered the Requirements if such individuals have previously worked as an AP at a Disciplined Firm. Principals who have not previously worked at a Disciplined Firm will not be included in the calculation. Otherwise, a firm could name ''straw man'' principals, thereby increasing the firm's overall calculation population and diluting the impact of the number of individuals who have worked at Disciplined Firms.

Counting non-AP principals who have been APs at Disciplined Firms in the past will cause eight current Member firms to trigger the Requirements. Collectively those firms have 12 individuals who are listed as principals but are not currently registered as APs of their respective firms. Those non-AP principals have worked as APs at 14 different Disciplined Firms in the past, and several of them have been personally named in CFTC and NFA actions. At least three other former Members would have been added during the past few years under the proposed amendments to the Notice, except that the CFTC took injunctive actions against them for sales practice violations and their NFA memberships were withdrawn.

Both of the successor firms resulting from the sham reorganization described above would trigger the Requirements under either of NFA's proposed amendments to the Notice. Since the principal of the original firm is also a principal of the two successor firms, that fact would automatically trigger the Requirements for those two firms. In addition, since the individual previously worked at a Disciplined Firm and is a non-AP principal of both successor firms, he would be included in the calculation of whether the AP mix at these two firms triggered the Requirements, which would result in a ratio that would trigger the Requirements for both successor firms.

d. Individuals Who Had Brief Tenures at a Disciplined Firm a Number of Years Ago

In 2003, the Board amended the calculation of APs that would trigger the Requirements to exclude APs who had worked at Disciplined Firms for less than 60 days more than 10 years ago. The proposed amendments to the Notice decrease the required time away from Disciplined Firms to five years while retaining the requirement that the individual must have worked a total of less than 60 days at Disciplined Firms.

Although their impact has been limited in terms of numbers, the 2003 modifications have had the desired effect of allowing a few firms that hire

[5] The Notice provides that some of the factors that the Waiver Committee may consider in evaluating a Member's waiver request include: The number of APs; the number of branch offices and GIBs; the experience and background of supervisory personnel; the number of APs who received training at Disciplined Firms, the time those APs worked for those firms and the amount of time which has passed since they worked for Disciplined Firms; The results of previous NFA examinations; and the cost effectiveness of taping.

[6] The conditions include requirements that the firm: Notify NFA of any action charging the firm with a violation of CFTC or SRO regulations or rules; Notify NFA of any customer complaint involving sales practices or promotional material; not change ownership; not have any material deficiencies noted during any SRO examination; not hire additional APs from Disciplined Firms; and execute a written acknowledgement that the firm understands the conditions of the waiver, and may include any other conditions deemed by the Waiver Committee to be appropriate in furtherance of the effectiveness of the enhanced supervisory procedures.

APs who worked at Disciplined Firms for less than 60 days more than ten years ago to avoid triggering the Requirements. In fact, only two firms would have triggered the Requirements under the former method but were not so classified because of the 2003 modification, and neither has been subject of any regulatory action. In its latest review of the Requirements, NFA revisited the question of whether further modifications can be prudently made to decrease the potential burden on NFA's membership and the Waiver Committee. NFA studied data to examine the effect of keeping the less than sixty days at a Disciplined Firm requirement while reducing the time away from Disciplined Firms from ten to five years.

NFA's analysis showed that reducing the required period from 10 years to five years while maintaining the less 60 days cumulative tenure at Disciplined Firms requirement yielded a population that is of no more cause for concern than the present system. Approximately 1,280 individuals are exempted from being counted under the current system. Reducing the required length of time away from a Disciplined Firm to five years would add approximately 275 APs who would not have to be counted in determining if a firm triggered the Requirements. As was the case with the group that has been exempted under the current ten-year test, the number of additional APs who would be exempted under the proposed modification who have been subject to any kind of regulatory action is small.[7]

Based upon this data, NFA believes that the triggering criteria as currently set out in the Notice can be further refined to reduce the burden on the membership while still imposing supervisory enhancements on firms that pose a concern given the background of their APs and principals at Disciplined Firms. Not including APs and principals who served less than sixty cumulative days with Disciplined Firms more than five years ago in calculating whether a Member is subject to enhanced supervision would also serve the efficiency and fairness of the Waiver Committee's function by removing a few non-problematic firms from the waiver process.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Exchange Act.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act and the Commodity Exchange Act.[9]

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA discussed the proposed rule change with its Special Committee to Study Customer Protection Issues, which voted to recommend the proposed rule change. NFA did not publish the proposed rule change to the membership for comment. NFA did not receive comment letters concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is not effective because the CFTC has not approved the proposed rule change. 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 Exchange Act.[10]

IV. Solicitation of Comments

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NFA–2005–01 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 No. SR–NFA–2005–01. 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 NFA. 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 No. SR–NFA–2005–01 and should be submitted on or before December 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6558 Filed 11–25–05; 8:45 am]

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[7] Ten individuals who have been subject to actions by NFA or the CFTC are exempted from being included in the calculation of whether a Member has become a Telemarketing Firm under the Notice's current 10-year provision. The proposed modification to reduce the required time away from a Disciplined Firm to more than five years would exempt six additional individuals who have been subject to actions by NFA or the CFTC. All charges against those individuals have been resolved. None of the individuals has been permanently barred from the industry and none of them are currently registered.

[8] 15 U.S.C. 78o–3(k).

[9] 7 U.S.C. 1.

[10] 15 U.S.C. 78s(b)(1).

[11] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52807; File No. SR–NSX–2005–06]

Self-Regulatory Organizations; National Stock Exchange; Order Approving Proposed Rule Change, and Amendment Nos. 1 and 2 Thereto, To Amend the Exchange's Customer Priority Rule To Require Designated Dealers To Implement and Maintain Automated Compliance Systems

November 18, 2005.

I. Introduction

On July 19, 2005, the National Stock Exchange℠ (''NSX'' or ''Exchange'') 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

[1] 15 U.S.C. 78s(b)(1).

19b–4 thereunder,[2] a proposed rule change to amend the text of NSX Rule 12.6 (''NSX's Customer Priority Rule'') to require the Exchange's Designated Dealers [3] to implement and maintain automated systems reasonably designed to ensure compliance with the NSX Customer Priority Rule.[4] On October 5, 2005, the Exchange filed Amendment No. 1 to the proposed rule change. On October 7, 2005, the Exchange filed Amendment No. 2 to the proposed rule change. Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on October 18, 2005.[5] No comments were received regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

The NSX Customer Priority Rule, currently provides, in part, that no member of the Exchange shall: (i) Personally buy or initiate the purchase of any security traded on the Exchange for its own account or for any account in which it or any associated person of the member is directly or indirectly interested while such member holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to sell such security in the unit of trading for a customer.[6]

NSX proposes to amend the text of the NSX Customer Priority Rule to require the Exchange's Designated Dealers to implement and maintain automated systems reasonably designed to ensure compliance with the NSX Customer Priority Rule.[7] The proposed rule change would also prohibit Designated Dealers from disabling or disengaging their automated systems, except under limited circumstances.[8] Furthermore, the proposed rule would make clear that, if a Designated Dealer holds for execution on the Exchange a customer buy order and a customer sell order that can be crossed, the Designated Dealer's automated system shall systemically cross them.[9]

NSX also proposes to provide that, for purposes of Rule 12.6, a member or any associated person of a member responsible for entering orders for its own account or any account in which it is directly or indirectly interested shall be presumed to have knowledge of a particular customer order.[10] The proposed interpretation would also provide that such presumption can be rebutted by adequate evidence that effectively demonstrates, to the Exchange's satisfaction, that the member has implemented a reasonable system of internal policies and procedures and has as adequate system of internal controls to prevent the misuse of information about customer orders by those responsible for entering such proprietary orders.[11]

III. Discussion and Commission Findings

The Commission has reviewed the proposed rule change, as amended, and finds that it is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] Specifically, the Commission finds that the proposed rule change, as amended, furthers the objectives of Section 6(b)(1) [13] of the Act, which requires the Exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the Act and the rules of the Exchange. In addition, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Currently, NSX Rule 12.6 prohibits an NSX member from trading ahead of its customers' orders. Customer order protection ensures that members consider the orders of their customers when executing their own orders and thus prevents the isolation of customer orders that might otherwise occur if a member were freely able to trade ahead of its customers' orders. The Commission believes that the proposed rule change should enhance investor confidence by helping to improve the quality of executions for customers. By ensuring a customer order's priority over the member's proprietary trading, more trade volume should be available to be matched with the customer's order, resulting in quicker and more frequent executions for customers. Specifically, the Commission believes that proposed NSX Rule 12.6(e) and Interpretations and Policies .01 to NSX Rule 12.6 should enhance the customer protections already provided by NSX Rule 12.6 by requiring NSX specialists to implement and maintain automated systems reasonably designed to ensure compliance with NSX Rule 12.6 and requiring that if an NSX specialist is able to cross two customer orders, such specialist's automated system shall systemically cross such order without the specialist interposing itself as a dealer.

Proposed Interpretations and Policies .03 to NSX Rule 12.6 would define what constitutes knowledge for purposes of NSX Rule 12.6 to provide that a member or any associated person of a member responsible for entering orders for its own account or any account in which it is directly or indirectly interested shall be presumed to have knowledge of a particular unexecuted customer order and would provide that such knowledge can be rebutted by adequate evidence that the member has implemented a reasonable system of internal policies and procedures and has an adequate system of internal controls to prevent misuse of information about customer orders by those responsible for entering such proprietary orders. The Commission believes that the proposed interpretation is substantially similar to a rule of the New York Stock Exchange, Inc. interpreting its trading ahead

[2] 17 CFR 240.19b–4.

[3] NSX Rule 5.5(a) defines ''Designated Dealer'' as a specialist.

[4] The Exchange filed this proposed rule change, in part, pursuant to the provisions of the Commission's Order Instituting Administrative and Cease-And-Desist Proceedings Pursuant to Sections 19(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Sanctions entered May 19, 2005. *See In the Matter of National Stock Exchange and David Colker*, Securities Exchange Act Release No. 51715 (May 19, 2005) (''Administrative Order''). In Section III.F.6. of the Administrative Order, NSX undertook to file proposed rule changes to require its designated dealers to implement system enhancements, to the extent practicable, such that when a dealer is in the process of executing a proprietary trade while in possession of a customer order that could trade in place of some or all of the dealer's side of the trade, the designated dealer's system will systemically allocate the execution to the customer's order unless the trade meets a specified exemption in NSX's rules. Pursuant to the undertaking, the proposed rule changes must also require that the required system enhancements cannot be disabled by NSX's designated dealers.

[5] *See* Securities Exchange Act Release No. 52576 (October 7, 2005), 70 FR 60594 (''Notice'').

[6] *See* NSX Rule 12.6(a).

[7] *See* Proposed NSX Rule 12.6(e).

[8] *Id.*

[9] *See* Proposed Interpretations and Policies .01 to NSX Rule 12.6.

[10] *See* Proposed Interpretations and Policies .03 to NSX Rule 12.6.

[11] *Id.*

[12] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(1).

[14] 15 U.S.C. 78f(b)(5).

rules,[15] and that such proposed interpretation raises no new issues or regulatory concerns.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (File No. SR–NSX–2005–06) and Amendment Nos. 1 and 2, thereto be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6562 Filed 11–25–05; 8:45 am]

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[15] *See* Securities Exchange Act Release No. 44139 (March 30, 2001), 66 FR 18339 (April 6, 2001) (approving proposed rule change SR–NYSE–94–34, including Supplementary Material .10 of NYSE Rule 92).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52780; File No. SR–NYSE–2004–64]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendments Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change Relating to Exchange Rule 342 (''Offices—Approval, Supervision and Control'')

November 16, 2005.

I. Introduction

On November 2, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') 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 amending NYSE Rule 342.30 (''Annual Reports'') primarily to require each member organization (''Member Organization'') and each member not associated with a member organization (''Member'') to file with the Exchange annual reports and to file a yearly statement confirming the adequacy of their compliance processes and procedures. On July 11, 2005, the NYSE filed Amendment No. 1 to the proposed rule change (''Amendment No. 1'').[3] On August 12, 2005, the NYSE filed Amendment No. 2 to the proposed rule change (''Amendment No. 2'').[4] The proposed rule change was published for comment in the **Federal Register** on August 22, 2005.[5] The Commission received two comments on the proposal, as amended.[6] On October 31, 2005, the Exchange filed a response to the comment letters,[7] and on the same day the Exchange filed Amendment No. 3 to the proposed rule change (''Amendment No. 3'').[8] This order approves the proposed rule change, as amended by Amendments Nos. 1 and 2, grants accelerated approval to Amendment No. 3 to the proposed rule change, and solicits comments from interested persons on Amendment No. 3.

II. Description of the Proposed Rule Change

A. Description of the Proposal

1. Background

NYSE Rule 342 requires supervision of the offices, departments and business activities of Members and Member Organizations. NYSE Rule 342.30, which was adopted on May 27, 1988, requires Members and Member Organizations to prepare an Annual Report addressing specified compliance issues by April 1 of each year. Currently, Member Organizations are required to submit this report only to their Chief Executive Officer (''CEO'') or managing partner and Members are required only to prepare, but are not required to submit, the report.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, which supplemented the original filing, the Exchange added its proposed Interpretive Handbook Interpretations 342.30(d)/01 and 342.30(e)/01 for purposes of clarifying issues related to the designation of a Chief Compliance Officer and the Annual Certification, respectively. The text of interpretations 342.30(d)/01 and 342.30(e)/01 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] In Amendment No. 2, which supplemented the original filing, the Exchange modified proposed interpretation 342.30(e)/01 in order to clarify the obligations of Members and Member Organizations in the preparation of annual certifications.

[5] *See* Exchange Act Release No. 52259 (Aug. 15, 2005), 70 FR 48997 (Aug. 22, 2005) (the ''Notice'').

[6] *See* letter from Scott C. Kursman, Senior Vice President & Chief Counsel for Global Compliance, Lehman Brothers, Inc. (''Lehman Letter''), dated September 14, 2005, and letter from John Polanin, Jr., Chairman, SIA Self-Regulation and Supervisory Practices Committee, dated Sept. 14, 2005 (''SIA Letter'').

[7] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission, dated October 31, 2005.

[8] In Amendment No. 3, which supplemented the original filing, the Exchange amended the proposed rule text to respond to certain of the commenters' concerns.

2. Provisions of the Proposed Rule Change

The proposed rule change makes the following changes relating to the Annual Reports:

- The Annual Reports must be filed with the Exchange by April 1 of each year.
- The anti-money laundering compliance programs required by Exchange Rule 445[9] have been added to the list of specific areas of compliance that must be discussed in the Annual Reports.
- Member Organizations must designate a principal officer or general partner as Chief Compliance Officer (''CCO'').[10]
- Each Member, and the CEO (or equivalent officer) of each Member Organization, must submit a certification attesting to the adequacy of their organization's compliance policies and procedures.[11]

3. Regulatory Purpose of Proposed Rule Change's Provisions

(a) Submission of Annual Reports to the Exchange.

Filing the Annual Reports with the Exchange will provide timely information about the compliance efforts of Members and Member Organizations, thereby strengthening and making more efficient the Exchange's regulatory oversight, and facilitating the required annual certifications (see below).

Because submission of the Annual Reports to the Exchange was previously not required, the reports were typically provided to the Exchange at the time of, or in connection with, examinations of Member Organizations and Members.[12] Consequently, the Exchange did not always receive important information in a timely, efficient manner. Providing the reports to Exchange staff at annual intervals will afford the Exchange a timely picture of the Members' and Member Organizations' compliance issues from the preceding year, a tool for planning surveillance and examinations, and more comprehensive information for evaluation of

[9] NYSE Rule 445 requires Members and Member Organizations to develop and implement written anti-money laundering programs consistent with the Bank Secrecy Act (31 U.S.C. 5311, *et seq.* and 31 CFR 103.120 thereunder).

[10] The Commission recently approved a similar requirement in NASD's Rule 3013. Securities Exchange Act Release No. 50347 (September 10, 2004), 69 FR 56107 (September 17, 2004) (SR–NASD–2003–176).

[11] The Commission recently approved a similar requirement in NASD's new Rule 3013. *See id.*

[12] Some Member Organizations already submit the Annual Reports to the Exchange and/or make them available to Exchange examiners.

compliance systems and programs and identification of potential regulatory problems.

(b) Addition of Anti-Money Laundering Discussion to Annual Report.

The USA Patriot Act [13] substantially expanded federal anti-money laundering regulations, and led to the enhancement of Exchange anti-money laundering requirements through the adoption of NYSE Rule 445 in April 2002. The Exchange considers anti-money laundering compliance programs to be important enough to warrant consideration and discussion in the Annual Reports, and so the proposed rule change adds these programs to the list of specific areas of compliance that must be discussed in the Annual Reports.

The addition of anti-money laundering compliance programs to the aforementioned list continues the Exchange's practice of incrementally supplementing the list to reflect changes in the evolving regulatory environment. A similar augmentation recently occurred through NYSE Rule 342.23, which added Members' and Member Organizations' internal controls to the Annual Report's list of required compliance discussions.[14]

(c) Designation of CCO.

The Exchange strongly believes that Member Organizations' compliance with federal laws and Exchange regulations should be of the utmost priority. In furtherance of that belief, the Exchange previously addressed the critically important role of the compliance function by requiring the Series 14 (NYSE Compliance Official) examination and registration, which are intended to ensure the qualifications of key compliance professionals.[15]

In further recognition of the increasing importance of the compliance function, the proposed rule change requires each Member Organization to formally designate a principal executive officer or general partner of the Member Organization as its CCO. This requirement is consistent with NYSE Rule 311(b)(5), which mandates that ''principal executive officers'' exercise responsibility over each of the prescribed business areas of a Member Organization (*e.g.*, compliance). Currently, each principal executive officer and general partner is generally required to pass an examination acceptable to the Exchange that pertains to knowledge of his or her functional responsibility.[16] Based on the type of business that individual conducts, and the structure of his or her organization, acceptable examinations include the Series 9/10 (General Securities Sales Supervisor), Series 14, Series 24 (General Securities Principal), Series 27 (Financial and Operations Principal), or Series 28 (Introducing Broker/Dealer Financial and Operations Principal).[17]

The CCO designation requirement does not apply to Members, because such members, whose activities are limited to interaction with other members on the Floor of the Exchange, generally lack the organizational infrastructure or scope of business activities that would necessitate designation of a CCO.[18]

(d) CEO Certification.

The proposed rule change's CEO certification requirement reflects the Exchange's belief that Member Organizations' senior executives, particularly CEOs, should focus the highest degree of attention and resources on the compliance function. While subordinates with supervisory responsibility for specific business lines remain accountable for the discharge of compliance policies and written supervisory procedures, the Exchange considers CEOs ultimately to be accountable for the compliance and supervision of their Member Organizations.[19] In keeping with those principles, the CEO certification requirement is intended to promote and expand dialogue between Member Organization CEOs and their officers who are responsible for compliance with federal laws and Exchange regulations.[20]

The required annual certification consists of four elements:

(i) Each Member or each Member Organization's CEO (or equivalent officer) must certify that processes are in place to: Establish and maintain policies and procedures designed to achieve compliance with Exchange rules and applicable federal securities laws and regulations; modify such policies and procedures as business, regulatory and legislative changes dictate; and test the effectiveness of such policies and procedures on a periodic basis. This requirement goes to the essential nature of compliance, and assures an appropriately heightened attention to its details.

(ii) Each Member Organization's CEO (or equivalent officer) must certify that he or she has conducted one or more meetings with the CCO during the preceding 12 months, during which they discussed and reviewed the matters described in the certification. Such meetings, which must entail discussion and review of the Member Organization's compliance efforts as of that date, should aid in the identification and resolution of significant ongoing and future compliance problems.

(iii) Each Member Organization's CEO (or equivalent officer) must certify that his or her Member Organization's compliance processes are evidenced in a written report that was reviewed by the Member Organization's CEO, CCO, and such other officers as the Member Organization deems necessary, and submitted to the Member Organization's board of directors and audit committee, if any. The report must be produced prior to the execution of the proposed certification, must describe the manner in which the compliance processes are administered, and must identity the officers and supervisors who are responsible for its administration.[21]

(iv) Each Member Organization's CEO (or equivalent officer) must certify that he or she has consulted with the CCO, such other officers of the Member Organization as the Member

[13] Public Law 107–56, 115 Stat. 272 (2001).

[14] *See* Securities Exchange Act Release No. 49882 (June 17, 2004), 69 FR 35108 (June 23, 2004) (SR–NYSE–2002–36).

[15] The Series 14 Examination is a qualification examination intended to ensure that the individuals designated as having day-to-day compliance responsibilities for their respective firms, or who supervise ten or more people engaged in compliance activities, have the knowledge necessary to carry out their job responsibilities. NYSE Rule 342.13(b) requires Members' and Member Organizations' compliance supervisors to pass the Series 14 Examination. *See* Securities Exchange Act Release No. 25763 (May 27, 1988), 53 FR 20925 (June 7, 1988).

[16] *See NYSE Interpretation Handbook*, Rule 304A(a), (c)/01.

[17] In proposed interpretations 342.30(d)/01 and 342.30(e)/01, the Exchange also proposes guidance regarding: The designation of CCOs; the interaction between CCOs and other executives during preparation of Annual Reports; the scope and subjects of the Annual Reports; and the reporting and certification process. *See supra* note 3.

[18] This exemption is consistent with other provisions of NYSE Rule 342. For example, under certain circumstances, some compliance officials at Member Organizations are exempt from the Series 14 requirement. *See NYSE Interpretation Handbook*, Rule 342(a)(b)/02.

[19] Attestations similar to the yearly CEO certification requirement proposed herein are also required by Exchange Rule 351(f), which calls for annual confirmation of compliance with Exchange Rule 472 (''Communications with the Public''). *See* Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002) (SR–NYSE–2002–09).

[20] The proposed rule change's CEO certification requirement corresponds in substance to NASD Rule 3013, which the Commission favorably described as seeking ''to provide a mechanism to compel substantial and purposeful interaction between senior management and compliance personnel to enhance the quality of members' supervisory and compliance systems.'' Securities Exchange Act Release No. 50347 (September 10, 2004), 69 FR 56107 (September 17, 2004) (SR–NASD–2003–176).

[21] *See* proposed interpretation 342.30(e)/01.

Organization deems necessary, and, to the extent the Member Organization's CEO (or equivalent officer), CCO and such other officers deem appropriate in order to attest to the statements in the certification, outside consultants, lawyers and accountants. This requirement recognizes that the CCO's expertise in the matters underlying the certification make his or her role in the process critical, and make the CCO an indispensable party to the CEO's certification.

The sentence ''[I]f any of these areas do not apply to the member or member organization, the report should so state,'' which currently concludes Rule 342.30, has been repositioned in the amended rule text to avoid the ambiguity that otherwise would have resulted from the addition of Rules 342.30(d) and 342.30(e). In response to commenters' concerns, the Exchange submitted Amendment No. 3, which clarified the parameters of the CEO's certification requirements.

B. Comment Summary and NYSE's Response

1. Comments Received

The proposal was published for comment in the **Federal Register** on August 22, 2005.[22]

We received two comments on the proposal.[23] Both commenters generally supported the NYSE's proposed rule change and commended the NYSE for its promotion of compliance efforts. However, both commenters were concerned with certain aspects of the NYSE's proposal. Commenters also generally expressed concern with the differences between the NYSE's compliance certification and reporting requirements and the NASD's requirements in NASD Rule 3013.[24] Both commenters were concerned with the language in the proposed rule change suggesting that the CEO would be required to certify to the ''adequacy'' of the firm's compliance policies and procedures. The commenters were concerned that the word ''adequacy'' created obligations inconsistent with the goals behind the certification and conflicted with the NASD's requirements, and both observed that the NASD had opted to remove similar ''adequacy'' language from Rule 3013. Both commenters were concerned about the subjectivity of certification as to the ''adequacy'' of the compliance processes and procedures, and both commenters requested that the NYSE remove the adequacy standard from the proposed language.[25]

Both commenters were also concerned that the proposal created ambiguity about the role of compliance officers. Both commenters stated that the NYSE's statements in the proposed rule change might make it appear that the NYSE intended to treat compliance officers as ''business line'' supervisors. One commenter said that this was contrary to the common understanding of the role of compliance officers,[26] while the other commenter requested that the Exchange clarify that the CCO does not have business-line responsibility.[27]

One of the commenters also requested that the Exchange determine why it would require that the certification be filed with the Exchange when this would diverge from the NASD's requirements.[28] The commenter asked that regulators gain additional experience with the NASD's CCO filing before improving on the requirement, and requested consistency between the Exchange's and the NASD's requirements in the filing of the reports.

2. NYSE's Response to Comments

The NYSE responded to the commenters' concerns by filing an amendment to the proposed rule text to remove the language ''the adequacy of.'' The Exchange noted in its response, however, that in order to emphasize the necessity of the CEO's belief that the processes attested to in the certification could reasonably achieve the goals of the rule, and that the CEO has an informed basis for the certification, the Exchange added the words ''and review'' to proposed Rule 342(e)(i)(A).

In response to commenters'' concerns that the proposed rule change might create business line responsibility for compliance officers, the Exchange responded that it sought to recognize the importance of the compliance function. The Exchange stated that the rule as written and intended would not vest the CCO with business-line responsibility. The Exchange noted that the language in the proposed rule change regarding ''business areas'' differs from that in Rule 311(b)(5), which sets forth the areas of responsibility of a CEO, and uses the phrase ''areas of the business.'' The Exchange stated that it had no intention of addressing the relationship of a CCO to such covered ''areas of the business.'' The Exchange also stated that the proposed rule change does not affect the determination of whether a compliance manager is a business-line manager, which the Exchange instead described as a fact-specific determination. The Exchange stated that the proposed rule change and filing should not be read as an alteration to the existing standards of determining whether a compliance manager is a business-line supervisor.

With respect to the filing requirement, the Exchange observed not only that the proposed rule change required members and member organizations to file the report previously required to be prepared during the preceding year, but also that the Exchange understood that NASD would be instituting a similar requirement, thereby creating consistency in requirements between the NYSE and the NASD.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–64 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–2004–64. 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

[22] *See* note 5, *supra*.

[23] *See* note 6, *supra*.

[24] *See* Lehman Letter, SIA Letter.

[25] *See* Lehman Letter, SIA Letter.

[26] *See* Lehman Letter.

[27] *See* SIA Letter.

[28] *See* Lehman Letter.

Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–64 and should be submitted on or before December 19, 2005.

IV. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with section 6(b) [29] of the Act in general and section 6(b)(5) of the Act [30] in particular, which require that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.[31] The proposed rule change facilitates the Exchange's review of Members' and Member Organizations' regulatory programs, strengthens Members' and Member Organizations' oversight of their compliance processes and procedures, and promotes increased involvement of Members and Member Organization CEOs in compliance matters. The Commission believes that the proposed rule change accomplishes these goals by emphasizing the importance of compliance procedures and processes and ensuring that CEOs will give these processes and procedures high priority. The proposal's requirements for designation of CCOs, annual CEO certifications, mandatory meetings of the CCOs and CEOS, annual compliance reports, and provision of the compliance reports to the Exchange should increase members' senior management's focus on the effectiveness of member compliance efforts with applicable NYSE rules and Federal securities laws. The proposed rule change will involve CEOs in the compliance processes by requiring the CEOs to be engaged with the creation of a report and a certification documenting compliance procedures and processes, further enhancing focus on Members' and Member Organizations' compliance and supervision systems, and thereby decreasing the likelihood of fraud and manipulative acts and increasing investor protection. The requirement for annual CEO certifications and preparation of a related report will help motivate firms to keep their compliance programs current with business and regulatory developments.

The proposed requirement of a certification that the Member or Member Organization has in place processes to establish, maintain, review, modify and test policies and procedures reasonably designed to achieve compliance with applicable NYSE rules and federal securities laws and regulations will help to ensure that members have in place a compliance framework that will allow the member to adapt its compliance efforts to the ever-changing business and regulatory environment. Especially helpful in this regard is the requirement that the processes in a Member Organization, at a minimum, must include one or more meetings annually between the CEO and CCO to (1) discuss and review the matters that are the subject of the certification; (2) discuss and review the Member Organization's compliance efforts as of the date of such meetings; and (3) identify and address significant compliance problems and plans for emerging business areas.

The Commission also believes that the proposed rule change will create procedures at the NYSE that are similar to those at the NASD, assisting Members and Member Organizations in their compliance efforts by creating a parallel framework for certifications to and reports on compliance processes and procedures at the NASD and NYSE.

The Commission believes that the commenters' concerns are addressed by the NYSE's responsive amendment as well as the NYSE's letter responding to the comments. The NYSE amended the rule text in Amendment No. 3 to address commenters' concerns that the proposed rule change would require Members and Member Organizations to certify as to the adequacy of their procedures. In its response to comments, the Exchange clarified that determining whether compliance officers are ''business-line'' is a fact-specific determination, and that the proposed rule change was not intended to affect that determination. Lastly, the NYSE's filing requirement requires only that the Member or Member Organization file with the Exchange a report that they are already required to prepare, which will provide the Exchange with useful information in its examinations of Members and Member Organizations. Further, submission of the certification to the Exchange assures timely completion of the Certification and will provide notice of any issues with the completion of the Certification. Further, the NASD has recently amended its Rules 3012 and 3013 to require that its members' reports be provided to its members' boards on a similar time frame to that of the NASD.[32] The commenter's concern with inconsistent timing of requirements between the NYSE and NASD should therefore be addressed by the NASD's proposed rule change.

Accelerated Approval of Amendment No. 3

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act.[33] Amendment No. 3 responded to comment letters by amending proposed NYSE Rule 342 to eliminate the words ''the adequacy of'' and to further clarify the rule by requiring that the Member or Member Organization review its procedures and processes. The amendment therefore clarified that although a CEO has no obligation to attest to the adequacy of the compliance processes and procedures, the CEO must nonetheless have an informed basis for the certification. The Commission finds that, given the objections raised with respect to the language ''the adequacy of'' by commenters, and the Exchange's concern that despite deletion of the ''adequacy'' concept, the CEO nonetheless have an informed basis for the certification, it is appropriate and responsive for the Exchange to amend the proposed rule text to reflect these concerns. Furthermore, the Commission believes that deletion of the ''adequacy'' language from the rule text and addition of a review requirement will allow the requirements set forth in the rule to more closely conform to those already instituted by the NASD in its Rule 3013, creating consistency between the two rules. Accordingly, the Commission believes that accelerated approval of Amendment No. 3 is appropriate.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act [34] that the proposed rule change (SR–NYSE–2004–64) be, and hereby is, approved.

[29] 15 U.S.C. 78f(b)

[30] 15 U.S.C. 78f(b)(5)

[31] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[32] *See* Exchange Act Release No. 52727 (Nov. 3, 2005), 70 FR 68122 (Nov. 9, 2005).

[33] 15 U.S.C. 78s(b)(2).

[34] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6557 Filed 11–25–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52806; File No. SR–PCX–2005–88]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1 and 2 Relating to Dissemination of Index Values

November 18, 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 Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), 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 PCX. The PCX filed Amendment Nos. 1 and 2 to the proposal on September 16, 2005, and October 27, 2005, respectively.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly owned subsidiary PCXE, proposes to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE. Specifically, the PCX proposes to amend the listing standards for Investment Company Units (''ICUs'') and Portfolio Depositary Receipts (''PDRs'') to provide that the current value of an index underlying a series of ICUs or PDRs must be widely disseminated by one or more major market data vendors at least every 15 seconds during the time the ICU or PDR trades on ArcaEx. The proposed rules also provide that the last official calculated index value must remain available during any period when the official index value does not change. The text of the proposed rule change is available on the PCX's Web site (*http://www.pacificex.com*) and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The PCX 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

PCXE Rule 5.2(j)(3), Commentary .01 and PCXE Rule 8.100, Commentary .01 provide listing standards for ICUs and PDRs, respectively, to permit the listing and trading of these securities pursuant to Rule 19b–4(e) under the Act.[4] Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') will not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class.[5]

The Exchange's rules for ICUs and PDRs currently provide that the current value of an index underlying a series of ICUs or PDRs will be disseminated every 15 seconds over the consolidated tape. The Exchange believes that, rather than identifying specifically in its rules the index dissemination service (that is, the consolidated tape), it is preferable to reflect in its rules a requirement for wide dissemination of the underlying index values. Accordingly, the proposal revises the PCXE's rules to provide that the value of the underlying index must be widely disseminated by a reputable index dissemination service, such as the Consolidated Tape Association, Reuters, or Bloomberg. The Exchange believes that the specific identity of the index dissemination service is not necessary, and the purpose of the rules would be achieved, as long as the service used for dissemination is reputable, accepted in the investment community, and effects appropriately wide dissemination of the particular index.

The Exchange therefore proposes to revise the listing standards for ICUs and PDRs to provide that the value of the underlying index must be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the ICU or PDR trades on ArcaEX.

As currently is the case, if the official index value does not change during some or all of the period when trading is occurring (as is typically the case with pre-market-open and after-hours trading, and also with foreign indexes because of time zone differences or holidays in the countries where such indexes' components trade), then the last official calculated index value must remain available during the time the ICU or PDR trades on ArcaEx.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(5),[7] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and 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.

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 clarified the time during which the current value of an index underlying a Portfolio Depositary Receipt or Investment Company Unit must be disseminated. Amendment No. 2, which replaced and superseded the original filing and Amendment No. 1 in their entirety, retained the clarification proposed in Amendment No. 1 and, in addition, revised the proposal to provide that the last official calculated index value must remain available during any period when the official index value does not change.

[4] 17 CFR 240.19b–4(e).

[5] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2005–88 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–PCX–2005–88. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the 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 publicly available. All submissions should refer to File Number SR–PCX–2005–88 and should be submitted on or before December 19, 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, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[9] The proposal amends the PCXE's rules to provide that the current value of an index underlying a series of ICUs or PDRs must be widely disseminated by one or more major market data vendors at least every 15 seconds during the time the ICU or PDR trades on ArcaEx. In its proposal, the PCX states that ''one or more major market data vendors'' would include the Consolidated Tape Association or private vendors, such as Reuters or Bloomberg. The Commission believes, however, that it is critical that such service widely disseminate such index values to market participants. The Commission notes that the rules of several other SROs contain an identical index dissemination requirement,[10] and that the proposed index dissemination requirement is similar to the index dissemination requirement used in the listing standards for narrow-based index options.[11] The Commission believes that the index dissemination requirement will help to ensure the transparency of current index values for indexes underlying series of ICUs and PDRs.

The PCX's rules also provide that the last official calculated index value must remain available during any period when the official index value does not change. As stated above, the PCX notes that periods when the official index value underlying an ICU or PDR do not change occur at the pre-market-open, during after-hours trading sessions, and for certain foreign indexes underlying an ICU or PDR, based on the time zone differences or foreign holidays.[12] The Commission notes that this provision is consistent with other SRO proposals that the Commission has approved recently.[13]

The PCX has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice of filing thereof in the **Federal Register**. As noted above, the Commission has approved identical index dissemination requirements for other SROs.[14] The Commission received no comments regarding these proposals. The Commission believes that granting accelerated approval of the PCX's proposal will allow the PCX to implement the same index dissemination requirement that the Commission has approved for other SROs, thereby helping the PCX to

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] *See, e.g.,* Amex Rules 1000, Commentary .03; and 1000A, Commentary .02 (listing standards for PDRs and Index Fund Shares); NASD Rule 4420(i) and (j) (listing standards for PDRs and Index Fund Shares); and Phlx Rule 803(i) and (l) (listing standards for Trust Shares and Index Fund Shares). *See also* Amex Order, Phlx Order, and NASD Order at note 13, *infra.*

[11] *See e.g.,* Chicago Board Options Exchange Rule 24.2(b); International Securities Exchange Rule 2002(b); Pacific Exchange Rule 5.13; and Philadelphia Stock Exchange Rule 1009A(b) (listing standards for narrow-based index options requiring that, among other things, the current underlying index value be reported at least once every 15 seconds during the time the index option trades on the exchange).

[12] Nothing herein is meant to address the situation of whether the ICU or PDR can actually remain trading when the primary market has halted or suspended trading in the underlying components or the official index provider ceases to disseminate and/or calculate the official index value during official day time trading hours. Rather, the provision is merely meant to address those times that the underlying value is unavailable on a real time basis because the marketplace for the component securities is not open for trading for legitimate business reasons, such as due to the time difference between the foreign and U.S. markets.

[13] *See, e.g.,* Securities Exchange Act Release Nos. 52572 (October 7, 2005), 70 FR 60125 (October 14, 2005) (notice of filing and order granting accelerated approval to File No. SR–PHLX–2005–57) (''Phlx Order''); 51868 (June 17, 2005), 70 FR 36672 (June 24, 2005) (notice of filing and order granting accelerated approval to File No. SR–Amex–2005–044) (''Amex Order''); and 51559 (April 15, 2005), 70 FR 20787 (April 21, 2005) (notice of filing of File No. SR–NASD–2005–024) (all noting that, if the official index value does not change during some or all of the time when trading is occurring, as is typically the case with pre-market open and after-hours trading, and also with foreign indexes due to time zone differences or holidays in the countries where the indexes' components trade, then the last official calculated index value must remain available throughout the market's trading hours). The Commission subsequently approved the NASD's proposal, as well as the proposals by the American Stock Exchange and the Philadelphia Stock Exchange. *See* Securities Exchange Act Release No. 51748 (May 26, 2005), 70 FR 32684 (June 3, 2005) (order approving File No. SR–NASD–2005–024) (''NASD Order'').

[14] *See* Amex Order, NASD Order, and PHLX Order, *supra* note 13.

compete with these markets. Accordingly, the Commission finds good cause, consistent with sections 6(b)(5) and 19(b) of the Act, to approve the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change (SR–PCX–2005–88), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6556 Filed 11–25–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52777; File No. SR–Phlx–2004–37]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto to Increase the Size of the Audit Committee

November 16, 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 May 20, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 20, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Phlx By-Laws, Article X, Sections 10–9(a)–(b) to: (i) Allow the Board of Governors the ability to increase the size of the Audit Committee beyond its current three persons to a maximum of five persons, and (ii) to require the members of the Audit Committee to be independent directors. Additionally, the proposed amendment to the Phlx By-Laws incorporates enhanced Audit Committee responsibilities. The text of the proposed rule change, as amended, is below. Proposed deletions are bracketed; proposed insertions are in *italics*.

* * * * *

PHLX BY-LAWS

Article 10, Sec. 10–9, Audit Committee

SEC. 10–9.

(a) The Audit Committee shall consist of *at least* three (3) members, *the exact number to be determined from time to time by the Board of Governors*. [who] *All members* shall [all] be [public] [independent non-industry Governors who have no material business relationship with the Exchange. A majority of the members, but not less than three (3) members shall be public Governors] *independent directors who have no material relationship with the Exchange*. [Audit Committee members shall not serve in a management capacity with the Exchange or any affiliate thereof and must be free of any other relationships that, by decision of the Board of Governors, would interfere with the exercise of independent judgment.] *The term ''independent director'' will be defined as a director who has no material relationship with the Exchange or any affiliate of the Exchange, any Member of the Exchange or any affiliate of such Member, or any issuer of securities that are listed or traded on the Exchange or a facility of the Exchange. The term ''material relationship'' will be defined as a relationship, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the director*.

(b) The Audit Committee shall have responsibility for dealings with the Exchange's [independent public accountants including] *external auditors, which includes:* (i) [making recommendations to the Board of Governors as to] *sole responsibility for the appointment*, retention and [dismissal of such public accountants] replacement of such auditors; (ii) *direct oversight over such auditors; (iii) review, at least annually, of the qualification and performance of such auditors;* [reviewing the scope of their services and fees; (iii) reviewing the audit plan;] (iv) *direct authority to resolve disagreements between management and such auditors regarding financial reporting* [reviewing internal controls]; (v) *responsibility to ensure the rotation of the lead and concurrent auditors every five years and certain other auditors every seven years, with time out periods*; (vi) *evaluation of the independence of external auditors, including ensuring that, other than deferred tax and compliance services, external auditors do not engage in certain non-audit services, as identified in the Audit Committee Charter, when they conduct audits for the Exchange, and approval of non-audit services where appropriate; (vii)* [reviewing] *review of* the ''management letter'' and reply thereto; and *(viii)* [having] the ability to meet with [the public accountants] *external auditors* without Exchange officers or employees.

The Audit Committee shall have responsibility for the Exchange's Internal Audit Department, which shall report to the Audit Committee. Such responsibility will include review of policies and procedures for and significant reports produced by the Internal Audit Department.

The Audit Committee shall review any legal matters that may materially impact the Exchange's financial statements and all examination, inspection or other reports made by any regulatory agency with regulatory oversight for the Exchange and the Exchange's responses thereto.

The Audit Committee shall review, at least annually, compliance with the Exchange's Code of Conduct with the assistance of the General Counsel's office.

The Audit Committee shall have the authority to conduct special reviews of any alleged improper conduct with respect to Exchange related activity, operations, finance or regulation.

The Audit Committee shall establish procedures for the receipt, retention, and treatment of complaints received by the Exchange regarding accounting, internal accounting controls, or other auditing matters and confidential anonymous submissions by Exchange employees regarding questionable accounting practices.

The Audit Committee may select and engage its own [counsel, consultants, accountants or other experts] *advisor(s)* to assist [in such reviews] *it in carrying out its duties*.

The Audit Committee shall determine the appropriate amount of funding to be

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[15] 15 U.S.C. 78s(b)(2).

[16] 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 revised the proposed rule text to add a definition of ''independent director'' and to make certain technical changes, and also revised the purpose section to reflect these changes and to enhance the description of the proposal generally.

provided by the Exchange for the purpose of paying: (i) Compensation to external auditors retained by the Audit Committee to prepare or issue an audit report; (ii) compensation to adviser(s) employed by the Audit Committee that it determines are necessary to carry out its duties; and (iii) ordinary administrative expenses of the Audit Committee that are necessary or appropriate to carry out its duties in respect of external auditors.

The Audit Committee shall have the authority to compel to appear and/or provide documents or other information, by members, member organizations, associated persons of member organizations, members of the Board of Governors, committee members, Exchange officers or Exchange employees.

(c) The Audit Committee shall meet at least once every calendar quarter.

* * * * *

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 proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change, as amended, is to strengthen the composition and charter of the Exchange's Audit Committee by increasing the pool of candidates eligible to serve, which may bring additional expertise to the Committee, as well as codifying more of the Audit Committee's responsibilities. The Exchange believes that expanding the size of its Audit Committee to permit (but not mandate) additional Committee members should be beneficial, because additional persons should bring new and different expertise and experience to Committee workings. The Exchange further believes that by setting higher standards with the independence requirement, it will promote independent decision-making by the Audit Committee. The term ''independent director'' would be defined as a director who has no material relationship with the Exchange or any affiliate of the Exchange, any member of the Exchange or any affiliate of such member, or any issuer of securities that are listed or traded on the Exchange or a facility of the Exchange.[4] The term ''material relationship'' would be defined as a relationship, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the director.[5]

The proposal would require the Exchange's Board of Governors' to determine whether each Audit Committee member is independent upon that director's nomination and thereafter no less frequently than annually and as often as necessary in light of the director's circumstances.[6] The proposal would also give the Exchange's Board of Governors the opportunity from time to time to adjust the number of members of the Exchange's Audit Committee.

The Exchange believes that the codification of the Committee's responsibilities with greater specificity is also appropriate. The proposal incorporates into the Phlx By-Laws enhanced Audit Committee responsibilities that are primarily adopted from the Sarbanes-Oxley Act of 2002.[7] The Exchange also proposes to remove the phrase ''independent public accountants'' from Section 10–9(b) of Article X of the Phlx By-Laws and replace it with the phrase ''external auditors'' to broaden the scope of the audit committee's oversight.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to 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, as amended, 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 Exchange consents, the Commission will:

(A) By order approve the 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–2004–37 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–2004–37. 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/*

[4] In submitting this proposal, the Exchange has cited to the Commission's proposed rules for ''independent directors'' of self-regulatory organizations and certain other aspects of the Commission's self-regulatory organization governance proposal. *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) (proposing Commission rules relating to the governance of self-regulatory organizations, among other things) (''SRO Governance Proposal''), Proposed Rules 6a–5(c)(2) and 15Aa–3(c)(2).

[5] *See* SRO Governance Proposal, Proposed Rules 6a–5(b)(13) and 15Aa–3(b)(14) (proposed definition of ''material relationship'').

[6] *See* SRO Governance Proposal, Proposed Rules 6a–5(c)(2) and 15Aa–3(c)(2) (proposed schedule of independence determinations by Board).

[7] While the Sarbanes-Oxley Act of 2002 does not by its terms apply to the Exchange, the Exchange has embraced applicable concepts on a voluntary compliance basis.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

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 File Number SR–Phlx–2004–37 and should be submitted on or before December 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–6561 Filed 11–25–05; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10254 and # 10255]

Kentucky Disaster # KY–00003

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an administrative declaration of a disaster for the State of Kentucky dated 11/15/2005.

Incident: Severe Storms and Tornadoes.

Incident Period: 11/06/2005.

Effective Date: 11/15/2005.

Physical Loan Application Deadline Date: 01/16/2006.

EIDL Loan Application Deadline Date: 08/14/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Hart.

Contiguous Counties:

Kentucky: Barrenn, Edmonson, Grayson, Green, Hardin, Larue, Metcalfe.

The Interest Rates are:

Homeowners With Credit Available Elsewhere: 5.375.

Homeowners Without Credit Available Elsewhere: 2.687.

Businesses With Credit Available Elsewhere: 6.557.

Business and Small Agricultural Cooperatives Without Credit Available Elsewhere: 4.000.

Other (Including Non-Profit Organizations) With Credit Available Elsewhere: 4.750.

Businesses and Non-Profit Organizations Without Credit Available Elsewhere: 4.000.

The number assigned to this disaster for physical damage is 10254 C and for economic injury is 10255 O.

The State which received an EIDL Declaration # is Kentucky.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Hector V. Barreto,

Administrator.

[FR Doc. E5–6543 Filed 11–25–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10256 and # 10257]

Massachusetts Disaster # MA–00003

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Massachusetts (FEMA–1614–DR), dated 11/10/2005.

Incident: Severe Storms and Flooding.

Incident Period: 10/07/2005 through 10/16/2005.

Effective Date: 11/10/2005.

Physical Loan Application Deadline Date: 01/09/2006.

Economic Injury (EIDL) Loan Application Deadline Date: 08/10/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 11/10/2005, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury): Berkshire, Bristol, Franklin, Hampden, Hampshire, Middlesex, Norfolk, Plymouth, Worcester.

Contiguous Counties (Economic Injury Only):

Massachusetts: Barnstable, Essex, Suffolk.

Connecticut: Hartford, Litchfield, Tolland, Windham.

New Hampshire: Cheshire, Hillsborough.

New York: Columbia, Dutchess, Rennselaer.

Rhode Island: Bristol, Newport, Providence.

Vermont: Bennington, Windham.

The Interest Rates are:

For Physical Damage:

Homeowners With Credit Available Elsewhere: 5.375.

Homeowners With Credit Available Elsewhere: 2.687.

Businesses With Credit Available Elsewhere: 6.557.

Businesses and Non-Profit Organizations Without Credit Available Elsewhere: 4.000.

Other (Including Non-Profit Organizations) With Credit Available Elsewhere: 4.750.

For Economic Injury:

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: 4.000.

The number assigned to this disaster for physical damage is 102566 and for economic injury is 102570.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E5–6544 Filed 11–25–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10228 and # 10229]

New Hampshire Disaster Number NH–00001

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–1610–DR), dated 10/26/2005.

Incident: Severe Storms and Flooding.

Incident Period: 10/07/2005 through 10/18/2005.

Effective Date: 11/17/2005.

Physical Loan Application Deadline Date: 12/27/2005.

EIDL Loan Application Deadline Date: 07/26/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of New Hampshire, dated 10/26/2005 is hereby amended to include the following areas as adversely affected by the disaster:

Primary County: Belknap.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E5–6542 Filed 11–25–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

CommunityExpress Pilot Program

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of Pilot Program extension.

SUMMARY: This notice announces the extension of SBA's CommunityExpress Pilot Program until May 31, 2006. This extension will allow time for SBA to complete its decision making regarding potential modifications and enhancements to the Program.

DATES: The CommunityExpress Pilot Program is extended under this notice until May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Charles Thomas, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; Telephone (202) 205–6490; *charles.thomas@sba.gov*.

SUPPLEMENTARY INFORMATION: The CommunityExpress Pilot Program was established in 1999 as a subprogram of the Agency's SBAExpress Pilot Program. Lenders approved for participation in CommunityExpress are authorized to use the expedited loan processing procedures in place for the SBAExpress Pilot Program, but the loans approved under this Program must be to distressed or underserved markets. To encourage lenders to make these loans, SBA provides its standard 75–85 percent guaranty, which contrasts to the 50 percent guaranty the Agency provides under SBAExpress. However, under CommunityExpress, participating lenders must arrange and, when necessary, pay for appropriate technical assistance for any borrowers under the program. Maximum loan amounts under this Program are limited to $250,000. SBA previously extended CommunityExpress until November 30, 2005 to consider possible changes and enhancements to the Program (70 FR 56962).

The further extension of this Program until May 31, 2006, will allow SBA to more fully evaluate the results and impact of the Program and to consider possible changes and enhancements to the Program. It will also allow SBA to further consult with its lending partners and the small business community about the Program.

(Authority: 13 CFR 120.3)

James E. Rivera,

Associate Administrator for Financial Assistance.

[FR Doc. E5–6546 Filed 11–25–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Export Express Pilot Program

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of Pilot Program extension.

SUMMARY: This notice announces the extension of SBA's Export Express Pilot Program until May 31, 2006. This extension will allow time for SBA to complete its decisionmaking regarding potential modifications and enhancements to the Program.

DATES: The Export Express Pilot Program is extended under this notice until May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Charles Thomas, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; Telephone (202) 205–6490; *charles.thomas@sba.gov.*

SUPPLEMENTARY INFORMATION: The Export Express Pilot Program was established as a subprogram of the Agency's SBAExpress Pilot Program. It was established in 1998 to assist current and prospective small exporters, particularly those needing revolving lines of credit. Export Express generally conforms to the streamlined procedures of SBAExpress, although it carries SBA's full 75–85 percent guaranty. The maximum loan amount under this Program is limited to $250,000. SBA previously extended Export Express until November 30, 2005 to consider possible changes and enhancements to the Program (70 FR 56962).

The further extension of this Program until May 31, 2006, will allow SBA to more fully evaluate the results and impact of the Program and to consider possible changes and enhancements to the Program. It will also allow SBA to further consult with its lending partners and the small business community about the Program.

(Authority: 13 CFR 120.3)

James E. Rivera,

Associate Administrator for Financial Assistance.

[FR Doc. E5–6547 Filed 11–25–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Investment Companies; Increase in Maximum Leverage Ceiling

13 CFR 107.1150(a) sets forth the maximum amount of Leverage (as defined in 13 CFR 107.50) that a Small Business Investment Company may have outstanding at any time. The maximum Leverage amounts are adjusted annually based on the increase in the Consumer Price Index published by the Bureau of Labor Statistics. The cited regulation states that SBA will publish the indexed maximum Leverage amounts each year in a Notice in the **Federal Register**.

Accordingly, effective the date of publication of this Notice, and until further notice, the maximum Leverage amounts under 13 CFR 107.1150(a) are as stated in the following table:

If your Leverageable capital is:	Then your maximum Leverage is:
(1) Not over $20,700,000	300 percent of Leverageable Capital
(2) Over $20,700,000 but not over $41,500,000	$62,100,000 + [2 × (Leverageable Capital—$20,700,000)]
(3) Over $41,500,000 but not over $62,200,000	$103,700,000 + (Leverageable Capital—$41,500,000)
(4) Over $62,200,000	$124,400,000

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: November 18, 2005.

Jaime Guzmán-Fournier,

Associate Administrator for Investment.

[FR Doc. E5–6545 Filed 11–25–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5172]

FY 2005 Funding Under the Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983 (Title VIII)

Deputy Secretary of State Robert B. Zoellick approved on July 20, 2005, the FY 2005 funding recommendations of the Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union. The FY 2005 Title VIII Program grants were awarded in late September 2005. The Title VIII Program, administered by the U.S. Department of State, seeks to build expertise on the countries of Eurasia and Central and East Europe through support to national organizations in the U.S. for advanced research, language and graduate training, and other activities conducted domestically and overseas. The FY 2005 grant recipients are listed below.

1. American Council of Learned Societies

Grant: $517,000 ($517,000 Southeast Europe).

Purpose: To support Individual Language Training Grants; Institutional Language Grants; Institutional Advanced Mastery Grants; the Dissertation Fellowships; the Junior Scholars' Training Seminar; and the Post-Doctoral Research Fellowships.

Contact: Andrzej W. Tymowski, Director of International Programs, American Council of Learned Societies, 633 Third Avenue, New York, NY 10017–6795, Tel: (646) 485–5945, Fax: (212) 949–8058, E-mail: *ANDRZEJ@acls.org.*

2. American Councils for International Education

Grant: $525,000 ($425,000-Eurasia, $100,000-Southeast Europe).

Purpose: To support fellowships for research and language training programs in Eurasia and Southeast Europe, including Advanced Russian Language and Area Studies Grants; Eurasia Regional Language Program Grants; Combined Research and Language Training Fellowships on Eurasia; Research Scholar Fellowships on Eurasia and Southeast Europe; Special Initiatives Research Fellowships on Central Asia and the Caucasus; Russian Language Flagship Fellowships; and Southeast Europe Language Fellowships. Contact: Graham Hettlinger, Program Manager, American Councils for International Education, 1776 Massachusetts Avenue, NW., Suite 700, Washington, DC 20036, Tel: (202) 833–7522, ext. 168, Fax: (202) 833–7523, E-mail: *hettlinger@actr.org.*

3. International Research and Exchanges Board

Grant: $801,000 ($500,000-Eurasia; $301,000-Southeast Europe).

Purpose: To support Individual Advanced Research Opportunities on policy relevant topics on Eurasia and Southeast Europe; Short-term Travel Grants, including four fellowships at embassies; Policy Connect Program for Collaborative Research; and the Regional Policy Symposium on EU Borderlands in conjunction with the Woodrow Wilson Center.

Contact: Joyce Warner, Director, Academic Exchanges and Research Division, International Research and Exchanges Board, 2121 K Street, NW., Suite 700, Washington, DC 20037, Tel: (202) 628–8188, Fax: (202) 628–8189, E-mail: *jwarner@irex.org.*

6. National Council for Eurasian and East European Research

Grant: $1,017,000 ($690,000-Eurasia; $327,000-Southeast Europe).

Purpose: To support the research contracts and fellowship grants of the National Research Program; the Hewett Fellowships; the Short-term Research Fellowships; and the Policy Research Fellowships.

Contact: Robert Huber, President, National Council for Eurasian and East European Research 910 Seventeenth Street, NW., Suite 300, Washington, DC 20006, Tel: (202) 822–6950, Fax: (202) 822–6955, E-mail: *dc@nceeer.org.*

5. Social Science Research Council

Grant: $700,000 ($700,000-Eurasia).

Purpose: To support advanced graduate and dissertation fellowships; post-doctoral fellowships; one dissertation workshop; the Training Seminar in Policy Research; the institutional language programs for advanced Russian and other Eurasian languages; and outreach and field-building activities.

Contact: Anthony Koliha, Assistant Director, Eurasia Program, Social Science Research Council, 810 Seventh Avenue, 31st Floor, New York, NY 10019, Tel: (212) 377–2700, Fax: (212) 377–2727 E-mail: *koliha@ssrc.org.*

6. University of Illinois at Urbana-Champaign

Grant: $175,000 ($125,000-Eurasia; $50,000-Southeast Europe).

Purpose: To support the Slavic Reference Service, which provides assistance to scholars in locating hard-to-find resources through electronic library resources, and electronic delivery of reference materials and resources; the Summer Research Laboratory, which provides two weeks of housing for associates pursuing policy relevant research on Russia, Southeast Europe, and Eurasia; a Balkans Studies Workshop for Junior Scholars and a Russian-Jewish Studies Training Workshop for Junior Scholars; and travel grants for doctoral students to conduct policy relevant research on Eurasia and Southeast Europe at the University of Illinois.

Contact: Merrily Shaw, Assistant to the Director of the Russian and East European Center, University of Illinois at Urbana-Champaign, 104 International Studies Building, 910 South Fifth Street, Champaign, IL 61820, Tel: (217) 244–4721/333–1244, Fax: (217) 333–1582, E-mail: *mshaw2@uiuc.edu* or *reec@uiuc.edu.*

7. University of Michigan: William Davidson Institute and Institute for Social Research

Grant: $100,000 (100,000-Eurasia).

Purpose: To support grants for research projects on business development, public policy and social research on Eurasia.

Contact: Kelly Janiga, Manager of Research Programs, The William Davidson Institute, University of

Michigan Business School, 724 East University Avenue, Ann Arbor, MI 48109–1234, Tel: (734) 615–4562, Fax: (734) 763–5850, E-mail: *janigak@umich.edu.*

8. The Woodrow Wilson International Center for Scholars

Grant: $715,000 ($425,000-Eurasia; $290,000-Southeast Europe).

Purpose: To support the residential programs for post-doctoral Research Scholars, Short-term Scholars and Interns; the Meetings Program for both the Kennan Institute and East European Studies, including a Workshop on Democracy and Civil Society in Ukraine; the Regional Policy Symposium on EU Borderlands in conjunction with IREX; and the East European Studies Program's Junior Scholars' Training Seminar in conjunction with the American Council of Learned Societies.

Contact: Martin Sletzinger, Director, East European Studies, Tel: (202) 691–4263, E-mail: *martin.sletzinger@wilsoncenter.org.* Maggie Paxson, Senior Associate, Kennan Institute, Tel: (202) 691–4237, E-mail: *Margaret.Paxson@wilsoncenter.org.* The Woodrow Wilson Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004–3027, Fax: (202) 691–4247.

Dated: October 24, 2005.

Kenneth E. Roberts,

Executive Director, Advisory Committee for Study of Eastern Europe and the Independent States of the Former Soviet Union, Department of State.

[FR Doc. E5–6620 Filed 11–25–05; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF STATE

[Public Notice 5215]

Notice of Meeting; United States International Telecommunication Advisory Committee; Information Meeting on the World Summit on the Information Society

The Department of State announces a meeting of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on matters related to telecommunication and information policy matters in preparation for international meetings pertaining to telecommunication and information issues.

The ITAC will meet to discuss matters related to the recently concluded World Summit on the Information Society (WSIS). The meeting will take place on Thursday, December 15, 2005 from 10:30 a.m. to 12 p.m. in the auditorium of the Historic National Academy of Science Building. The National Academy of Sciences is located at 2100 C St. NW., Washington, DC.

Members of the public are welcome to participate and may join in the discussions, subject to the discretion of the Chair. Persons planning to attend this meeting should send the following data by fax to (202) 647–5957 or e-mail to *jillsonad@state.gov* not later than 24 hours before the meeting: (1) Name of the meeting, (2) your name, and (3) organizational affiliation. A valid photo ID must be presented to gain entrance to the National Academy of Sciences Building. Directions to the meeting location may be obtained by calling the ITAC Secretariat at (202) 647–5205.

Dated: November 17, 2005.

Anne Jillson,

Foreign Affairs Officer, International Communications and Information Policy, Department of State.

[FR Doc. E5–6617 Filed 11–25–05; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.981–2A, Fuel Tank Flammability

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Availability of Proposed Advisory Circular (AC) 25.981–2A, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which sets forth an acceptable means, but not the only means, of demonstrating compliance with the provisions of the airworthiness standards for transport category airplanes related to Fuel Tank Flammability Reduction. This proposed AC complements revisions to the airworthiness standards that are being proposed by a separate notice. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before March 23, 2006.

ADDRESSES: Send all comments on proposed AC to: Federal Aviation Administration, Attention: Mike Dostert, Propulsion/Mechanical Systems Branch, ANM–112, FAA, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the address above, telephone (425) 227–2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments, as they may desire. Commenters should identify AC 25.981–2A and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.airweb.faa.gov/rgl* under ''Draft Advisory Circulars.'' A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

Discussion

This proposed AC provides information and guidance on compliance with the airworthiness standards for transport category airplanes about limiting the time a fuel tank may be flammable or mitigation of hazards from flammable fuel air mixtures within fuel tanks. This guidance is applicable to transport category airplanes for which a new, amended, or supplemental type certificate is requested and affected existing design approval holders as stated in proposed §§ 25.1815, 25.1817, 25.1819, and 25.1821 contained in a proposed new subpart I to Title 14, Code of Federal Regulations (14 CFR) part 25, ''Continued Airworthiness and Safety Improvements.'' The AC also provides guidance on compliance with the associated proposed requirements for operators of affected airplanes that must comply with the requirements of 14 CFR parts 91, 121, 125, and 129 (for a foreign person or foreign air carrier operating a U.S.-registered airplane) to incorporate flammability mitigation means by specified dates.

The Notice of Proposed Rulemaking would not apply the proposed new requirements to transport category airplanes designed solely for cargo carriage. However, AC 25.981–2 remains applicable to these airplanes, which must comply with the current flammability standards contained in

§ 25.981(c) that would be moved to the proposed § 25.981(e). We will consider combining this guidance for all transport category airplanes into one AC when the final rule and AC are issued.

It is one means, but not the only means, of complying with the part 25 revisions proposed in Notice No. 05–14 entitled ''Fuel Tank Flammability Reduction,'' published in this same edition of the **Federal Register**. Issuance of AC 25.981–2A is contingent on final adoption of the proposed revisions to part 25.

Issued in Washington, DC, on November 18, 2005.

Dorenda D. Baker,

Acting Director, Aircraft Certification Service.

[FR Doc. E5–6531 Filed 11–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In May 2005, there were three applications approved. This notice also includes information on two applications, approved in April 2005, inadvertently left off the April 2005 notice. Additionally, nine approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

Public Agency: County of Emmet, Pellston, Michigan.

Application Number: 05–10–C–00–PLN.

Application Type: Impose and use a PFC.

PFc Level: $4.50.

Total PFC Revenue Approved in This Decision: $280,750.

Earliest Charge Effective Date: July 1, 2011.

Estimated Charge Expiration Date: July 1, 2013.

Class of Air Carriers Not Require to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Pellston Regional Airport.

Brief Description of Projects Approved for Collections and Use:

Apron expansion of the north.

Terminal are drainage improvements.

Reconstruction of apron.

Animal control/security fencing.

Parking lot rehabilitation and reconstruction.

Snow removal equipment: two plow trucks with sanders.

Land acquisition—Ely Road.

Relocation of Ely Highway.

Purchase runway snow sweeper.

Purchase a snow blower.

Purchase a front end loader.

Master plan study.

Purchase of a generator.

Apron expansion of the south.

Expansion of general aviation terminal building.

Decision Date: April 28, 2005.

FOR FURTHER INFORMATION CONTACT: Jason Watt, Detroit Airports District Office, (734) 229–2906.

Public Agency: City of Eugene, Oregon.

Application Number: 05–06–C–00–EUG.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $2,400,000.

Earliest Charge Effective Date: July 1, 2005.

Estimated Charge Expiration Date: September 1, 2007.

Classes of Air Carriers Not Required to Collect PFC'S: (1) Operations by air taxi/commercial operators utilizing aircraft having a maximum seating capacity of less than 20 passengers when enplaning revenue passengers in a limited, irregular/non-scheduled, or special service manner; (2) operations by air taxi/commercial operators without regard to seating capacity for revenue passengers transported for student instruction, non-stop sightseeing flights that begin and end at the airport and are conducted within a 25-mile radius of the same airport, firefighting charters, ferry or training flights, air ambulance/medical evacuation flights, and aerial photography or survey flights.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Mahlon Sweet Field—Eugene Airport.

Brief Description of Project Approved for Collection and Use: Terminal rehabilitation.

Decision Date: April 29, 2005.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Dallas-Fort Worth International Airport Board, Dallas-Fort Worth, Texas.

Application Number: 05–08–C–00–DFW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $2,892,040,000.

Earliest Charge Effective Date: August 1, 2017.

Estimated Charge Expiration Date: December 1, 2032.

Class of Air Carriers Not Required to Collect PFC'S: All air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Dallas-Forth Worth International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Construct terminal D apron and associated development.

Construct terminal D.

Construct terminal D access roads.

Acquire and demolish hotel.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Mitigate runway 17L/35R wetlands.

Construct terminal D major storm drain.

Install surface movement guidance and control system.

Construct three terminal D skybridges.

Modify central utilities plant.

Install SkyLink flight information display system.

Reconstruct taxiway K.

Decision Date: May 4. 2005.

FOR FURTHER INFORMATION CONTACT: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: Yakima Air Terminal Board, Yakima, Washington.

Application Number: 05–09–C–00–YKM.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $198,184.

Earliest Charge Effective Date: August 1, 2005.

Estimated Charge Expiration Date: August 1, 2006.

Class of Air Carriers Not Required to Collect PFC'S: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Yakima Air Terminal-McAllister Field.

Brief Description of Projects Approved for Collection and Use:

Construct west general aviation/air freight ramp.

Purchase aircraft rescue and firefighting vehicle, Index B.

Develop sign and marking plan.

Wildlife management plan.

Relocate runway hold position signs.

Pavement maintenance program, crack seal.

Obstruction removal.

Decision Date: May 17, 2005.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Parish of East Baton Rouge/City of Baton Rouge, Baton Rouge, Louisiana.

Application Number: 05–06–C–00–BTR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $9,986,100.

Earliest Charge Effective Date: November 1, 2021.

Estimated Charge Expiration Date: March 1, 2026.

Class of Air Carriers Not Required to Collect PFC's: Part 135 air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Baton Rouge Metropolitan Airport.

Brief Description of Projects Approved for Collection and Use:

Extend runway 4L/22R.

Professional fees.

Expand general aviation apron.

Decision Date: May 19, 2005.

FOR FURTHER INFORMATION CONTACT: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

AMENDMENT TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
*01–08–C–01–CMX, Hancock, MI	04/14/05	$254,644	$254,644	10/01/05	08/01/05
03–09–C–01–CMX, Hancock, MI	04/14/05	104,266	104,266	05/01/07	09/01/06
93–01–C–01–FCA, Kalispell, MI	04/27/05	1,211,000	1,027,388	11/01/99	04/01/98
01–01–C–01–SBY, Salisbury, MD	04/28/05	440,892	507,026	07/01/05	10/01/05
98–02–C–01–IDA, Idaho Falls, ID	05/02/05	820,404	836,239	11/01/00	10/01/00
00–03–C–01–BIL, Billings, MT	05/03/05	4,153,600	5,163,262	10/01/05	05/01/06
02–02–C–02–AVL, Asheville, NC	05/04/05	4,936,653	4,936,653	11/01/06	11/01/06
00–05–C–01–CLM, Port Angeles, WA	05/06/05	211,683	198,350	10/01/03	10/01/03
00–03–C–03–MSO, Missoula, MT	05/10/05	2,500,000	2,500,000	12/01/04	12/01/04

(Note: The amendment denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Hancock, MI, this change is effective on July 1, 2005.)

Issued in Washington, DC on November 15, 2005.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 05–23305 Filed 11–25–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Data-Link Recorder Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of, and requests comment on proposed Technical Standard Order (TSO) C–177, Data-Link Recorder Systems. This proposed TSO tells persons seeking a TSO authorization or letter of design approval what minimum performance standards (MPS) their Data-Link Recorder Systems must meet to be identified with the appropriate TSO marking.

DATES: Comments must be received on or before December 28, 2005.

ADDRESSES: Send all comments on this proposed TSO to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionics Systems Branch (AIR–130), 800 Independence Avenue SW., Washington, DC 20591. ATTN: Ms. Dara Gibson. Or, you may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Dara Gibson, AIR–130, Room 815, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Telephone (202) 385–4632, fax (202) 385–4651.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed TSO by submitting written data, views, or arguments to the above address. Comments received may be examined, both before and after the closing data, in room 815 at the above address, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date before issuing the final TSO.

Background

Digital messaging technology created a need for a data-link recorder system that would ensure the information and data necessary for the investigation of incidents and accidents continues to be recorded on-board the aircraft. It is important that these digital messages are properly recorded and that the timing correlation between cockpit displays and other aircraft systems are preserved. This proposed TSO prescribes the minimum performance standards for data-link recorder systems equipment necessary to receive, process, record, preserve, and retrieve Communication, Navigation, Surveillance/Air Traffic Management (CNS/ATM) digital

messages transmitted to and from the aircraft to assist in investigation an incident or accident.

How to Obtain Copies

You can view or download the proposed TSO from its online location at: *http://www.airweb.faa.gov/rgl*. At this Web page, select ''Technical Standard Orders.'' At the TSO page, select ''Proposed TSOs.'' For a paper copy, contact the person listed in **FOR FURTHER INFORMATION CONTACT** Note, SAE International documents are copyrighted and may not be reproduced without the written consent of SAE International. You may purchase copies of SAE International documents from: SAE International, 400 Commonwealth Drive, Warrendale, PA, 15096–0001, or directly from their Web site: *http://www.sae.org/*.

Issued in Washington, DC, on November 17, 2005.

Susan J. M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 05–23304 Filed 11–25–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2005–22844]

Agency Information Collection Activities; Request for Comments; Renewal of Two Information Collections

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew two information collections, which are summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 27, 2006.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA–2005–22844 by any of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to 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.

SUPPLEMENTARY INFORMATION:

1. *Title:* A Guide to Reporting Highway Statistics.

OMB Control Number: 2125–0032 (Expiration Date: March 31, 2006).

Abstract: A Guide to Reporting Highway Statistics provides for the collection of information by describing policies and procedures for assembling informational data from the existing files of State agencies. The data includes motor-vehicle registration and fees, motor-fuel use and taxation, driver licensing, and highway taxation and finance. Federal, State, and local governments use the data for transportation policy discussions and decisions. Motor-fuel data are used in attributing receipts to the Highway Trust Fund and subsequently in the apportionment formulae that are used to distribute Federal-Aid Highway Funds. The data are published annually in the FHWA's *Highway Statistics.* Information from *Highway Statistics* is used in the joint FHWA and Federal Transit Administration required biennial report to Congress, *The Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance Report to Congress*, which contrasts present status to future investment needs.

Respondents: State and local governments of the 50 States, the District of Columbia and the Commonwealth of Puerto Rico.

Estimated Average Burden Per Response: The estimated average reporting burden per response for the annual collection and processing of the data is 825 hours for each of the States (including local governments), the District of Columbia and the Commonwealth of Puerto Rico.

Estimated Total Annual Burden: The estimated total annual burden for all respondents is 42, 900 hours.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Howard, (202) 366–2833, Department of Transportation, Federal Highway Administration, Office of Policy, Office of Highway Policy Information, Highway Funding and Motor Fuels Division (HPPI–10), 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

2. *Title:* Highway Performance Monitoring System (HPMS).

OMB Control Number: 2125–0028 (Expiration Date: April 30, 2006).

Abstract: The HPMS data that is collected is used for management decisions that affect transportation, including estimates of the Nation's future highway needs and assessments of highway system performance. The information is used by the FHWA to develop and implement legislation and by State and Federal transportation officials to adequately plan, design, and administer effective, safe, and efficient transportation systems. This data is essential to the FHWA and Congress in evaluating the effectiveness of the Federal-aid highway program. The HPMS also provides miles, lane-miles and travel components of the Federal-Aid Highway Fund apportionment formulae. The data that is required by the HPMS is continually reassessed and streamlined by the FHWA.

Respondents: State governments of the 50 States, the District of Columbia and the Commonwealth of Puerto Rico.

Estimated Average Burden per Response: The estimated average burden per response for the annual collection and processing of the HPMS data is 1,440 hours for each State, the District of Columbia and the Commonwealth of Puerto Rico.

Estimated Total Annual Burden: The estimated total annual burden for all respondents is 74,880 hours.

For Further Information Contact: Mr. Robert Rozycki, (202) 366–5059, Department of Transportation, Federal Highway Administration, Highway Systems Performance (HPPI–20), Office of Highway Policy Information, Office of Policy & Governmental Affairs, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Public Comments Invited

You are asked to comment on any aspect of these information collections, including: (1) Whether the proposed collections are necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including use of electronic technology, without reducing the quality of the collected

information. The agency will summarize and/or include your comments in the request for OMB's clearance of these information collections.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: November 21, 2005.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E5–6579 Filed 11–25–05; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Request for Comments

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on September 16, 2005 (70 FR 54798).

DATES: Comments must be submitted on or before December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Mr. Victor Angelo, Office of Support Systems, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6470). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On September 16, 2005, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 70 FR 54798. FRA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Inspection and Maintenance Standards For Steam Locomotives.

OMB Control Number: 2130–0505.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Abstract: The Locomotive Boiler Inspection Act (LBIA) of 1911 requires each railroad subject to the Act to file copies of its rules and instructions for the inspection of locomotives. The original LBIA was expanded to cover the entire steam locomotive and tender and all its parts and appurtenances. This Act then requires carriers to make inspections and to repair defects to ensure the safe operation of steam locomotives. The collection of information is used by tourist or historic railroads and by locomotive owners/operators to provide a record for each day a steam locomotive is placed in service, as well as a record that the required steam locomotive inspections are completed. Additionally, the collection of information is used by FRA Federal inspectors to verify that necessary safety inspections and tests have been completed, and to ensure that steam locomotives are indeed ''safe and suitable'' for service and are properly operated and maintained.

Annual Estimated Burden Hours: 314 hours.

Title: Railroad Rehabilitation and Improvement Financing Program.

OMB Control Number: 2130–0548.

Type of Request: Extension of a currently approved collection.

Affected Public: State and local governments, government sponsored authorities and corporations, railroads (including Amtrak), and joint ventures that include at least one railroad.

Abstract: Prior to the enactment of the Transportation Equity Act of the 21st Century (''TEA 21''), Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (the ''Act''), 45 U.S.C. 821 *et seq.*, authorized FRA to provide railroad financial assistance through the purchase of preference shares (45 U.S.C. 825), and the issuance of loan guarantees (45 U.S.C. 831). The FRA regulations implementing the preference share program were eliminated on February 9, 1996, due to the fact that the authorization for the program expired (28 FR 4937). The FRA regulations implementing the loan guarantee provisions of Title V of the Act are contained in 49 CFR part 260. Section 7203 of TEA 21, Public Law 105–178 (June 9, 1998), replaces the existing Title V financing programs. The collection of information is used by FRA staff to determine the financial eligibility of applicants for a loan regarding eligible projects for the improvement/rehabilitation of rail equipment or facilities, the refinancing of outstanding debt for these purposes, or the development of new intermodal or railroad facilities. The aggregate unpaid principal amounts of obligations can not exceed $3.5 billion at any one time and not less than $1 billion is to be available solely for projects benefitting freight railroads other than Class I carriers.

Annual Estimated Burden Hours: 2,213 hours.

Title: U.S. Locational Requirement for Dispatching U.S. Rail Operations.

OMB Control Number: 2130–0556.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Abstract: Part 241 requires, in the absence of a waiver, that all dispatching of railroad operations that occurs in the United States be performed in this country, with a minor exception. A railroad is allowed to conduct extraterritorial dispatching from Mexico or Canada in emergency situations, but only for the duration of the emergency. A railroad relying on the exception must provide written notification of its action to the FRA Regional Administrator of each FRA region in which the railroad operation occurs; such notification is not required before addressing the emergency situation. The information collected under this rule will be used as part of FRA's oversight function to ensure that extraterritorial dispatchers comply with applicable safety regulations.

Annual Estimated Burden Hours: 16 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on November 16, 2005.

D.J. Stadtler,

Director, Office of Budget, Federal Railroad Administration.

[FR Doc. E5–6527 Filed 11–25–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Bay Area To Central Valley High-Speed Train Programmatic Environmental Impact Statement

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: FRA is issuing this notice to advise the public that FRA with the California High Speed Rail Authority (Authority) will jointly prepare a programmatic environmental impact statement (EIS) and programmatic (program) environmental impact report (EIR) for the San Francisco Bay Area to Central Valley portion of the California High-Speed Train (HST) System in compliance with state and Federal laws, in particular the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). FRA is also issuing this notice to solicit public and agency input into the development of the scope of the Bay Area to Central Valley HST Program EIR/EIS and to advise the public that outreach activities conducted by the Authority and its representatives will be considered in the preparation of the EIR/EIS. The FRA and the Authority recently completed a Program EIR/EIS as the first-phase of a tiered environmental review process for the Proposed California HST system, and as part of the selected HST Alternative defined a broad corridor between the Bay Area and Central Valley generally bounded by (and including) the Pacheco Pass (SR–152) to the South, the Altamont Pass (I–580) to the North, the BNSF Corridor to the East, and the Caltrain Corridor to the West. The Bay Area to Central Valley HST Program EIR/EIS will further examine this broad corridor as the next phase of the tiered environmental review process.

FOR FURTHER INFORMATION CONTACT: For further information regarding the programmatic environmental review, please contact: Mr. Dan Leavitt, Deputy Director of the California High-Speed Rail Authority, 925 L Street, Suite 1425, Sacramento, CA 95814, (telephone 916–324–1541) or Mr. David Valenstein, Environmental Program Manager, Office of Passenger Programs, Federal Railroad Administration, 1120 Vermont Avenue (Mail Stop 20), Washington, DC 20590, (telephone 202 493–6368).

SUPPLEMENTARY INFORMATION: The need for a high-speed train (HST) system is directly related to the expected growth in population and resulting increases in intercity travel demand in California over the next twenty years and beyond. As a result of this growth in travel demand, there will be more travel delays from the growing congestion on California's highways and at airports. In addition, there will be effects on the economy and quality of life from a transportation system that is less and less reliable as travel demand increases and from deteriorating air quality in and around California's metropolitan areas. The intercity highway system, commercial airports, and conventional passenger rail serving the intercity travel market are currently operating at or near capacity, and will require large public investments for maintenance and expansion in order to meet existing demand and future growth. The proposed high HST system would provide a new mode of high-speed intercity travel that would link the major metropolitan areas of the state; interface with international airports, mass transit, and highways; and provide added capacity to meet increases in intercity travel demand in California in a manner sensitive to and protective of California's unique natural resources.

Background

The California High-Speed Rail Commission, established in 1993 to investigate the feasibility of high-speed rail in California, concluded that a HST system is technically, environmentally, and economically feasible and set forth recommendations for the technology, corridors, financing, and operations of a proposed system. Following the Commission's work, a new nine-member California High-Speed Rail Authority (Authority) was established in 1996 and is authorized and directed by statute to undertake the planning for the development of a proposed statewide HST network that is fully coordinated with other public transportation services. The Legislature has granted the Authority the powers necessary to oversee the construction and operation of a statewide HST network once financing is secured. As part of the Authority's efforts to implement a HST system, the Authority adopted a Final Business Plan in June 2000, which reviewed the economic feasibility of a 700-mile-long HST system capable of speeds in excess of 200 miles per hour on a dedicated, fully grade-separated state-of-the-art track.

The FRA has responsibility for oversight of the safety of railroad operations, including the safety of any proposed high-speed ground transportation system. For the California proposal, the FRA would need to take

certain regulatory actions before any new high-speed train system could operate.

Between 2001 and 2005, the Authority and FRA completed a Program EIR/EIS for the proposed California HST System. The Authority certified the Program EIR under CEQA and approved the proposed HST System, and the FRA issued a Record of Decision under NEPA on the Program EIS for the proposed California HST system. The Program EIR/EIS established the purpose and need for the HST system, analyzed a proposed high-speed train alternative and compared it with a No Project/No Action Alternative and a Modal Alternative. In conjunction with approving the Program EIR/EIS, the Authority and the FRA selected the High-Speed Train Alternative and selected certain corridors/general alignments, general station locations, mitigation strategies, design practices and further measures to guide development of the HST system at the site-specific project level to avoid and minimize potential adverse environmental impacts.

For the Bay Area to Central Valley segment, the Authority and FRA selected a broad corridor between the Bay Area and the Central Valley containing a number of feasible route options and proposed further study in this area to make programmatic selections of alignments and stations. The FRA consulted with the Council on Environmental Quality (CEQ), and CEQ concurred that the proposed tiering of programmatic decisions for this segment would be consistent with NEPA and would support compliance with Section 404 of the Clean Water Act. The primary purpose of the Bay Area to Central Valley HST Program EIR/EIS environmental process is to do further studies to help identify a preferred alignment between these two parts of the state.

The preparation of this Program EIR/EIS is being coordinated with the concurrent preparation of a Bay Area Regional Rail Plan by a coalition of the San Francisco Bay Area Rapid Transit District (BART), the Metropolitan Transportation Commission (MTC), the Peninsula Joint Powers Board (Caltrain) and the Authority. Bay Area voters in 2004 passed Regional Measure 2, which requires MTC to adopt a Regional Rail Plan. As stipulated in the Streets and Highways Code Section 30914.5 (f), the Regional Rail Plan will define the future passenger rail transportation network for the nine-county San Francisco Bay Area, including an evaluation of the HST options. Information on the Regional Rail Plan is available on the Internet at: *http://www.bayarearailplan.info.*

Alternatives

An initial alternatives evaluation will consider all reasonable HST alignment and station options within the selected broad corridor at a programmatic level of analysis to identify the most practical and feasible HST options for analysis in the Bay Area to Central Valley HST Program EIR/EIS. The alternatives will include:

No-Action Alternative: The take no action (No-Project) alternative is defined to serve as the baseline for comparison of HST alternatives. The No-Build Alternative represents the state's transportation system (highway, air, and conventional rail) as it exists in 2005, and as it would exist after completion of programs or projects currently planned for funding and implementation by 2020, according to the following sources of information:

- State Transportation Improvement Program (STIP)
- Regional Transportation Plans (RTPs) for all modes of travel
- Airport plans
- Intercity passenger rail plans (Amtrak Five- and Twenty-year Plans)

High-Speed Train Alternatives: The Authority and FRA have selected a steel-wheel-on-steel-rail HST system for advancement, over 700 miles long (1,126-kilometer long) capable of speeds in excess of 200 miles per hour (mph) (320 kilometers per hour [km/h]) on dedicated, fully grade-separated tracks, with state-of-the-art safety, signaling, and automated train control systems that would serve the major metropolitan centers of California, extending from Sacramento and the San Francisco Bay Area, through the Central Valley, to Los Angeles, Orange County, the Inland Empire, and San Diego. The Authority and the FRA have also selected a broad corridor for the HST between the Bay Area and Merced generally bounded by (and including) the Pacheco Pass (SR–152) to the South, the Altamont Pass (I–580) to the North, the BNSF Corridor to the East, and the Caltrain Corridor to the West. Within this corridor there are several potential alignments and potential station locations that will be considered. In heavily constrained urban areas, potential alignments that assume sharing corridors and/or tracks with other passenger rail services will be considered. The Authority and FRA will consider all reasonable and practical HST alignment and station alternatives and will focus the program environmental analysis on the alternatives that best meet the purpose and need of the HST system. Within the previously selected broad corridor, the Authority would not pursue alignments through Henry Coe State Park or a station at Los Banos.

Station placement would be determined on the basis of ridership potential, system-wide needs, and local planning constraints/conditions. Station placement will be coordinated with local and regional planning agencies, and will provide for seamless connectivity with other modes of travel. Potential station locations to be evaluated further include: Gilroy, San Jose, Redwood City, San Francisco International Airport (SFO), San Francisco, Merced, Modesto, Tracy, Pleasanton, Fremont/Union City, Oakland International Airport (OAK), and Oakland. The potential sites listed represent general locations for planning purposes.

Scoping and Comments

FRA encourages broad participation in the EIS process during scoping and review of the resulting environmental documents. Comments and suggestions are invited from all interested agencies and the public at large to insure the full range of issues related to the proposed action and all reasonable alternatives are addressed and all significant issues are identified. In particular, FRA is interested in determining whether there are areas of environmental concern where there might be the potential for significant impacts identifiable at a programmatic level. Public agencies with jurisdiction are requested to advise the FRA and the Authority of the applicable environmental review requirements of each agency, and the scope and content of the environmental information that is germane to the agency's statutory responsibilities in connection with the proposed project.

Public ''scoping'' meetings have been scheduled together with regional rail plan workshops as an important component of the scoping process for both the State and Federal environmental review. Scoping meetings will be advertised locally and additional public notice will be provided separately with the dates, times, and locations of these scoping meetings. Scoping meetings are scheduled for the following major cities:

- Oakland on November 29, 2005—Joseph P. Bort Metrocenter, Larry Dahms Auditorium, 101 Eighth Street, from 3 p.m. to 5 p.m. and 6 p.m. to 8 p.m.
- San Jose on November 30, 2005—New San Jose City Hall—Council Wing, Community Room, W120, 200 East Santa Clara Street, from 3 p.m. to 5 p.m. and 6 p.m. to 8 p.m.

- San Francisco on December 1, 2005—San Francisco Civic Center Complex, Hiram Johnson Building, Auditorium, 455 Golden Gate Avenue, from 3 p.m. to 5 p.m. and 6 p.m. to 8 p.m.
- Livermore on December 5, 2005—Livermore public San Francisco Civic Center Complex, Hiram Johnson Building, San Diego Room, 455 Golden Gate Avenue, from 3 p.m. to 5 p.m. and 6 p.m. to 8 p.m.
- Modesto on December 6, 2005—DoubleTree Hotel, 1150 Ninth Street, Modesto, from 3 p.m. to 5 p.m. and 6 p.m. to 8 p.m.
- Suisun City on December 8, 2005—Suisun City Hall, Council Chambers, 701 Civic Center Blvd., from 3 p.m. to 5 p.m. and 6 p.m. to 8 p.m.

Persons interested in providing comments on the scope of the programmatic EIR/EIS should do so by December 16, 2005. Comments can be sent in writing to Mr. David Valenstein at the FRA address identified above. Comments may also be addressed to Mr. Dan Leavitt of the Authority at their address identified above. Information and documents regarding the environmental review process will also be made available through the Authority's Internet site: *http://www.cahighspeedrail.gov/.*

Issued in Washington, DC, on November 18, 2005.

Mark E. Yachmetz,

Associate Administrator for Railroad Development.

[FR Doc. E5–6526 Filed 11–25–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–23093]

Ferrari S.p.A and Ferrari North America, Inc.; Receipt of Application for a Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

In accordance with the procedures of 49 CFR part 555, Ferrari S.p.A. and Ferrari North America (collectively, ''Ferrari'') have applied for a Temporary Exemption from S14.2 of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection,* for the Ferrari F430 model vehicle. The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.[1]

We are publishing this notice of receipt of the application in accordance with the requirements of 49 U.S.C. 30113(b)(2), and have made no judgment on the merits of the application.

DATES: You should submit your comments not later than December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Chris Calamita in the Office of Chief Counsel, NCC–112, (Phone: 202–366–2992; Fax 202–366–3820; E-Mail: *Christopher.calamita@nhtsa.dot.gov*).

SUPPLEMENTARY INFORMATION

I. Background

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production does not exceed 10,000, as determined by the NHTSA Administrator (15 U.S.C. 1410(d)(1)). Ferrari's total production is approximately 4,000 vehicles per year. Fiat S.p.A., a major vehicle manufacturer, holds a majority interest in Ferrari. Consistent with past determinations, NHTSA has determined that Fiat's interest in Ferrari does not result in the production threshold being exceeded (see, 54 FR 46321; November 2, 1989).

The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not include any provision indicating that a person is a manufacturer of a vehicle by virtue of ownership or control of another person that is a manufacturer. NHTSA has stated, however, that a person may be a manufacturer of a vehicle manufactured by another person if the first person has a sufficiently substantial role in the manufacturing process that it can be deemed the sponsor of the vehicle. The agency considers the statutory definition of ''manufacturer'' (15 U.S.C. 1391(5)) to be sufficiently broad to include sponsors, depending on the circumstances.

In the present instance, the Ferrari F430 bears no resemblance to any motor vehicle designed or manufactured by Fiat, and the agency understands that the F430 was designed and engineered without assistance from Fiat. Further, the agency understands that such assistance as Ferrari may receive from Fiat relating to use of test facilities and the like is an arms length transaction for which Ferrari pays Fiat. Accordingly, NHTSA concludes that Fiat is not a manufacturer of Ferrari vehicles by virtue of being a sponsor.

II. Why Ferrari Needs a Temporary Exemption and How Ferrari Has Tried in Good Faith to Comply With FMVSS No. 208

Ferrari states that the F430 was originally designed in the mid-1990s and was originally designated as the 360 model. The petitioner states that the Modena (coupe) version of the 360 was launched in 1999, followed by the Spider (convertible) version in 2000, and the Challenge Stradale in 2003. Production of these vehicles continued until the end of 2004. According to the petitioner, shortly thereafter Ferrari began an aesthetic redesign of the vehicle, relying on the same chassis. Ferrari stated that the redesigned vehicle, the F430, will be produced until late 2008. According to Ferrari, 2008 will mark the end of the life cycle for the 360/F430 vehicle. The petitioner states that the 360 and F430 were designed to comply, and do comply, with all of the FMVSSs in effect at the time the 360 was originally designed. The petitioner stated that the provisions of FMVSS No. 208 established in 2000 (65 FR 30680; May 12, 2000; Advanced Air Bag rule) were not anticipated by Ferrari when the 360 vehicle model was designed.

Ferrari stated that it has been able to bring the F430 into compliance with all of the high-speed belted and unbelted crash test requirements of the Advanced Air Bag rule. However, it stated that it has not been able to bring the vehicle into compliance with the child out-of-position requirements (S19, S21, and S23), and the 5th percentile adult female out-of-position requirements for the driver seat (S25).

Ferrari stated that despite efforts to involve numerous potential suppliers, it has not identified any that are willing to work with the company to develop an occupant classification system that would comply with the S19, S21, S23, and S25. Moreover, Ferrari stated that it is unable to reconfigure the F430 to accommodate an occupant classification system and air bag design that would comply with these requirements.

Ferrari has requested an exemption for the F430 from the advanced air bag provisions in FMVSS No. 208 during model years 2007 and 2008 (i.e., September 1, 2006 through August 31, 2008). Ferrari claims that compliance with the advanced air bag provisions would result in substantial economic hardship and has filed this petition under 49 CFR 555.6(a).

[1] To view the application using the Docket number listed above, please go to: *http://dms.dot.gov/search/searchFormSimple.cfm.*

Ferrari stated that its inability to sell the F430 in the United States through 2007 would lead to a substantial loss of sales and revenue. Ferrari stated that in 2004, sales of the 8-cylinder 360 models, those models being replaced by the F430, accounted for 86 percent of its U.S. sales. Ferrari projected that if it were unable to sell the F430 model in the U.S., it would realize a decrease in net profit of approximately 44 million Euros ($53,000,000) in 2007. Ferrari stated that such consequences demonstrate ''substantial economic hardship'' within the meaning of 49 U.S.C. 30113(b)(3)(B)(i).

Ferrari has requested that additional specific details regarding its finances and financial forecasts be afforded confidential treatment under 49 CFR 512.4, *Asserting a claim for confidential information*. We have determined that this information is to be afforded such treatment.

III. Why an Exemption Would Be in the Public Interest

The petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest. Specifically:

1. Ferrari states that the vehicle is equipped with a variety of ''active safety'' systems beyond that required by the FMVSSs and that these systems ''significantly improve vehicle handling and enhance controllability.'' Such systems include the Manettino control system, which adjusts vehicle handling and stability to specific driving conditions; the Control Stability System, an electronic stability control system; Electro-Hydraulic Differential, a system that manages torque distribution between the two rear wheels to improve stability; Continuous Damping Control, a system that adjusts to road conditions in order to improve braking; and ''Sky-Hook'' strategy.[2]

2. The petitioner states that the F430 also has a variety of passive safety features not required under the FMVSS, including seat belt pretensioners and a fuel system that complies with the upgraded fuel system integrity requirements in advance of the compliance date.

3. Ferrari notes that the requirements for which the F430 does not comply are primarily designed to protect children from injuries due to air bag deployment. Ferrari argues that it is unlikely that young children would be passengers in the vehicles covered by the exemption.

4. Ferrari states that the F430 will have a manual on/off switch for the passenger air bag. Ferrari also notes that a child restraint system that automatically suppresses the passenger air bag when properly installed would be available upon request of a consumer at no cost.

5. Ferrari states that the F430 was designed and marketed as a high performance, racing type vehicle, and therefore would have negligible on-road operation. Thus, Ferrari states, the impact of the exemption is expected to be minimal.

6. Ferrari argues that granting the exemption would increase choices available to the U.S. driving population in the high-performance vehicle segment.

7. The petitioner argues that granting the exemption would maintain the viability of U.S. firms associated with the sales and maintenance associated with the F430. Ferrari projects the F430 to be a major part of Ferrari sales in the U.S. during the two-year period for which an exemption has been requested.

IV. How You May Comment on the Ferrari Application

We invite you to submit comments on the application described above. You may submit comments [identified by the DOT Docket number in the heading of this document] by any of the following methods:

- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site by clicking on ''Help and Information'' or ''Help/Info.''
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided.

Docket: For access to the docket in order to read background documents or comments received, go to *http://dms.dot.gov* at any time or to 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 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*.

We shall consider all comments received before the close of business on the comment closing date indicated below. To the extent possible, we shall also consider comments filed after the closing date. We shall publish a notice of final action on the application in the **Federal Register** pursuant to the authority indicated below.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: November 18, 2005.

Roger A. Saul,

Director, Office of Crashworthiness Standards.

[FR Doc. E5–6551 Filed 11–25–05; 8:45 am]

BILLING CODE 4910–59–P

[2] The ''Skyhook'' strategy detaches the vehicle body, as a sprung mass, from what is taking place on the axles and wheels by calming the movement of the body * * * In addition to improved comfort, this provides for ''optimal control of the vehicle body at all times.'' Page 10 of the petition.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–23083]

Notice of Receipt of Petition for Decision That Nonconforming 2005 Lamborghini Murcielago Roadster Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2005 Lamborghini Murcielago roadster 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 2005 Lamborghini Murcielago roadster passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety

standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and 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 December 28, 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 Federal motor vehicle safety standards 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 Federal motor vehicle safety standards.

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**.

Automobile Concepts, Inc. (''AMC''), of North Miami, Florida (Registered Importer 01–278) has petitioned NHTSA to decide whether nonconforming 2005 Lamborghini Murcielago roadster passenger cars are eligible for importation into the United States. The vehicles which AMC believes are substantially similar are 2005 Lamborghini Murcielago roadster passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2005 Lamborghini Murcielago roadster passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

AMC submitted information with its petition intended to demonstrate that non-U.S. certified 2005 Lamborghini Murcielago roadster passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards 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 Lamborghini Murcielago roadster passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 118 *Power-Operated Window, Partition, and Roof Panel Systems,* 124 *Accelerator Control Systems,* 135 *Passenger Car Brake 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,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* 301 *Fuel System Integrity,* 302 *Flammability of Interior Materials,* and 401 *Interior Trunk Release.*

In addition, the petitioner claims that the vehicles comply with the Bumper Standard found in 49 CFR part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Installation of a U.S.-model instrument cluster and associated software, or installation of an indicator lamp lens cover inscribed with the word ''brake'' in the instrument cluster in place of the one inscribed with the international ECE warning symbol and conversion of the speedometer to read in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (A) Installation of rear side marker lamps that incorporate rear side-mounted reflex reflectors; and (b) inspection of all vehicles and replacement of any non U.S.-model components necessary to meet the requirements of this standard with U.S.-model components on vehicles that are not already so equipped.

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. 114 *Theft Protection:* Installation of U.S. version software, or installation a supplemental warning buzzer to meet the requirements of this standard.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of U.S. version software, or installation of a supplemental buzzer system to ensure that the seat belt warning system conforms to the requirements of this standard; and (b) inspection of all vehicles and replacement of any non U.S.-model components necessary to meet the requirements of this standard with U.S.-model components on vehicles that are not already so equipped.

Petitioner states that the restraint systems used at the front outboard seating positions include airbags and knee bolsters as well as combination lap and shoulder belts. These seat belt systems are self-tensioning and release by means of a single red pushbutton.

Standard No. 209 *Seat Belt Assemblies:* Inspection of all vehicles and replacement of any non-U.S.-model seat belts with U.S.-model components on vehicles that are not already so equipped.

Standard No. 210 *Seat Belt Assembly Anchorages:* Inspection of all vehicles and replacement of any non-U.S.-model seat belt anchorages with U.S.-model components on vehicles that are not already so equipped.

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.

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. E5–6529 Filed 11–25–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–22654]

Notice of Tentative Decision To Partially Rescind Decision That Nonconforming 1990–1999 Nissan GTS and GTR Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of tentative decision to partially rescind decision that nonconforming 1990–1999 Nissan GTS and GTR passenger cars are eligible for importation.

SUMMARY: This document provides notice that NHTSA has tentatively decided to partially rescind its decision that 1990–1999 Nissan GTS and GTR passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States. If NHTSA makes this rescission, Nissan R33 model GTS and GTR passenger cars manufactured between January 1996 and June 1998 would be eligible for importation following the decision; the others would not be eligible for importation following the decision.

DATES: The closing date for comments on the tentative decision is December 28, 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 Federal motor vehicle safety standards (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. 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 other evidence (such as an engineering analysis) that NHTSA decides is 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**.

NHTSA was petitioned by a registered importer to decide whether 1990–1999 Nissan GTS and GTR Passenger cars are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of this petition under Docket Number NHTSA–99–5507 on April 16, 1999 (64 FR 18963). As stated in the notice, the petitioner claimed that 1990–1999 Nissan GTS and GTR passenger cars have safety features that comply with many standards that apply to passenger cars of the model years in question, and are capable of being altered to comply with other applicable standards. With respect to FMVSS No. 208 Occupant Crash Protection, the petitioner stated that the driver's air bags on 1990–1993 models, and the driver and passenger's air bags on 1994–1999 models, would need to be replaced with components manufactured to petitioner's specifications based on the results of dynamic tests conducted by MGA Research Corporation. As indicated by the petitioner, these tests were conducted after it had made certain structural modifications to the vehicles.

No comments were received in response to the notice of petition. Based on its review of the information submitted by the petitioner, NHTSA granted the petition on November 15, 1999, and assigned Vehicle Eligibility Number VCP–17 to vehicles admissible under its decision. The agency published notice of the decision on January 19, 2000 (65 FR 3002).

The agency has obtained information from Nissan North America, Inc., on behalf of Nissan Motor Company, LTD (Nissan) of Tokyo, Japan, the manufacturer of Nissan 1990–1999 Nissan GTS and GTR passenger cars. Nissan informed the agency that it manufactured three distinct GTS and GTR models from 1990 to 1999, designated as the R32, the R33, and the R34 models, respectively. Nissan stated that the R32, the R33, and the R34 models differ in terms of their ''structural design and restraint performance,'' and that each of the models, which followed a chronological sequence, was ''newly designed and different from the type preceding it.'' Nissan confirmed that the company received official type approval from the Japanese government for each model separately, and that it was ''highly likely that each model type would perform differently in the crash tests required by the FMVSS.''

Nissan also provided a chart showing production ''start'' and ''end'' dates for the R32, the R33, and the R34 models. The R32 models were manufactured from May 1989 through November 1994; the R33 models were manufactured from August 1993 through June 1998; and the R34 models were manufactured from November 1997 through August 2002. Included in the chart is information identifying the production ''start'' dates when air bags were offered as an option and as standard equipment at both the driver and the front passenger's seating positions on the R32, the R33, and the R34 model vehicles.

The agency did not have this information from Nissan at the time of its original decision to grant import eligibility to 1990–1999 Nissan GTS and GTR passenger cars. Instead, the agency heavily relied on the results of static and dynamic tests on two modified 1996 R33 model vehicles, which, in its overall context, the original petition suggested were representative. As indicated in the original petition, the petitioner had made structural modifications to these two vehicles and replaced the air bags at the driver's and the front passenger's seating positions with components manufactured to its own specifications. The petitioner did not demonstrate full compliance with the performance requirements of FMVSS 208 and other crashworthiness standards (*e.g.*, FMVSS Nos. 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Mounting* and 301 *Fuel System Integrity*) for R32 and R34 models because no test data was provided to the agency.

The agency's decision to grant import eligibility to 1990–1999 Nissan GTS and GTR passenger cars also relied on the petitioner's assertion that the original equipment driver's air bag on 1990–1993 models, and the driver and passenger's air bags on 1994–1999 models would be replaced with components manufactured to the petitioner's specifications.

However, the air bag production chart provided by Nissan shows that no driver's air bags were available in the R32 GTS model until August 1991. For the R32 GTR model, no driver's air bag was offered until February 1994, and it was then offered only as optional equipment. Nissan did not offer passenger's air bags in the R32 model. Nissan began production of the R33 model in August 1993, offering both driver and passenger's air bags as optional equipment on the GTS model. It was not until January 1995 that a driver's air bag was offered on the GTR model. As of January 1995, the driver's air bag became standard on both GTS and GTR models. One year later, in January 1996, the passenger's air bag became standard on both GTS and GTR models.

Nissan has informed the agency that it does not possess records that would allow it to determine whether any individual vehicle had the air bags installed when those air bags were offered as optional equipment. The agency can only be assured that R33 vehicles, produced by Nissan beginning in January 1996, will have both driver and passenger's air bags installed as original equipment.

On the basis of the foregoing, NHTSA has tentatively concluded that the original grant of eligibility to the 1990–1999 Nissan GTS and GTR passenger cars, comprising R32, R33, and R34 model vehicles, was overly broad. As a consequence, the agency has tentatively decided to rescind that decision in part. If it makes this rescission, only Nissan R33 model GTS and GTR passenger cars manufactured between January 1996 and June 1998 will be eligible for importation in the future.

Vehicle Eligibility Number

The importer of a vehicle admissible under any import eligibility decision must enter on the HS–7 Declaration form covering the entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for importation. Vehicle eligibility number VCP–17 is currently assigned to 1990–1999 Nissan GTS and GTR passenger cars. If this tentative decision is made final, NHTSA will rescind that eligibility number and assign a new eligibility number to Nissan GTS and GTR passenger cars manufactured between January 1996 and June 1998 that are to remain eligible for importation.

Interested persons are invited to submit comments on the tentative decision 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. 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 will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 21, 2005.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E5–6530 Filed 11–25–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974; as Amended

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of alteration of Privacy Act system of records.

SUMMARY: The Treasury Department, Internal Revenue Service, gives notice of a proposed alteration to the system of records entitled, ''Treasury/IRS 34.022—National Background Investigation Center Management Information System,'' which is subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

DATES: Comments must be received no later than December 28, 2005. The alteration will be effective January 9, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of Governmental Liaison & Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments will be made available for public inspection and copying in the Internal Revenue Service Freedom of Information Reading Room, 1111 Constitution Avenue, NW., Room 1621, Washington, DC 20224, telephone number (202) 622–5164, (not a toll free call).

FOR FURTHER INFORMATION CONTACT: Mary Anderson, Program Analyst, Personnel Security Office, Internal Revenue Service, (703) 647–5477.

SUPPLEMENTARY INFORMATION: The purpose of the alteration is to reflect changes in the system name resulting from system upgrade, system location, record access procedures, and system manager. The alteration will more accurately describe the categories of individuals and records in the system. The alteration is also adding a routine use permitting the disclosure of information to a contractor. The system notice was last published in its entirety in the **Federal Register**, Vol. 66, Number 237, pages 63817–63818, on December 10, 2001.

The specific changes to the system notice are as follows:

The title of the system of records ''National Background Investigation Center Management Information System (NBICMIS)'' is being changed to: ''Automated Background Investigations System (ABIS). The abbreviation ''NBICMIS'' which appears throughout the notice is being changed to ''ABIS.''

The system location is being changed to National Background Investigations Center, 5 Spiral Drive, Suite 2, Florence, KY 41042–1395. Under ''categories of individuals covered by the system,'' new categories of contractors are being added, as well as a category for IRS employees that require or hold a security clearance.

The ''categories of records'' section is being revised by removing the word ''timekeeping'' and by adding as a category information about security clearances and the status of the clearances.

The Authority for Maintenance of the System is revised to include a new Executive Order 12674 (as modified by Executive Order 12731).

Under ''routine uses of records maintained in the system,'' a new routine use (routine use (9)), is being proposed to permit disclosure of information to a government contractor.

Under ''retrievability'' the description is being revised to include additional means of retrieving information.

Under ''safeguards'' the first sentence is revised to reflect access by additional categories of individuals.

Information provided under ''retention and disposal,'' ''system manager(s) and address,'' and ''record access procedures'' is being updated to reflect changes to records manuals, addresses and titles.

Under ''record source categories'' the text is being updated to include information obtained from contractors.

Under ''exemptions claimed for the system,'' the language is being revised to show that the exemption being claimed will be changed from 5 U.S.C. 552a(j)(2) to 5 U.S.C. 552a(k)(5).

In a proposed rulemaking being published separately in the **Federal Register**, the Department is proposing to amend its regulations at 31 CFR 1.36. The amendment will change the basis of the exemption claimed for this system of records from that which is provided under 5 U.S.C. 552a(j)(2), to that which is provided under 5 U.S.C. 552a(k)(5).

The report of an altered system of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

The revised notice for Treasury/IRS 34.022—Automated Background Investigations System (ABIS) is published in its entirety below.

Dated: October 3, 2005.

Sandra L. Pack,

Assistant Secretary for Management and Chief Financial Officer.

Treasury/IRS 34.022

SYSTEM NAME:

Automated Background Investigations System (ABIS)—Treasury/IRS.

SYSTEM LOCATION:

National Background Investigations Center, 5 Spiral Drive, Suite 2, Florence, KY 41042.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Internal Revenue Service, Bureau of the Mint within the Department of the Treasury, Federal Law Enforcement Training Center, and private contractors employed by IRS to perform work at IRS facilities, leased space or on IRS systems; contractors employed by the Department of the Treasury; permanent and temporary employees of banks contracted to perform Lockbox activities (the processing of Federal tax payments) for the IRS; and employees of the Internal Revenue Service requiring a security clearance, having their security clearance cancelled or transferred.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) ABIS records contain National Background Investigations Center (NBIC) employee name, office, start of employment, series/grade, title, separation date; (2) ABIS tracking records contain status information on investigations from point of initiation through conclusion; (3) ABIS records contain assigned cases and distribution of time; (4) ABIS case tracking records contain background investigations, and (5) levels of clearance, date of clearance and any change in status of clearance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7608, 7801 and 7803; Executive Order 12674 (as modified by Executive Order 12731).

PURPOSE(S):

The purpose of ABIS is to: (1) Effectively manage NBIC resources and assess the effectiveness of current NBIC programs as well as assist in determining budget and staff requirements. (2) Provide the technical ability for other components of the Service to analyze trends in integrity matters on an organizational, geographic and violation basis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority, responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes; (3) Disclose information to a Federal, State, local, or other public authority, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: (a) The agency, 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 Department of Justice or the agency has agreed to represent the employee; or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(5) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate

to an agency's functions relating to civil and criminal proceedings;

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(8) Disclose information to a public or professional licensing organization when such information indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed;

(9) Disclose information to a contractor when necessary to perform a government contract.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By name of individual to whom it applies, social security number, alias, date of birth, case controller, submitting office number, case type, case number or a combination of these fields.

SAFEGUARDS:

Access is limited to authorized IRS personnel including IRS and other U.S. Treasury Department contractors who have a direct need to know. Hard copy of data is stored in rooms of limited accessibility except to employees. These rooms are locked after business hours. Access to magnetic media is controlled by computer passwords. Access to specific ABIS records is further limited by computer security programs limiting access to select personnel.

RETENTION AND DISPOSAL:

Records are maintained in accordance with IRM 1.15, Records Disposition Handbook.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices: Chief, Mission Assurance. Official maintaining the system: Associate Director, Personnel Security and Investigations, National Background Investigations Center, 5 Spiral Drive, Suite 2, Florence, KY 41042.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to them may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in ''Record access procedures'' below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to this system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to IRS Personnel Security and Investigations, OS:MA:AP:PS, 5205 Leesburg Pike, Suite 510, Falls Church, VA 22041–3802, Attn: Disclosure Staff.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Current and former employees of the Internal Revenue Service, Department of the Treasury, Bureau of the Mint and the Federal Law Enforcement Training Center. Private contractors employed by IRS to perform work at IRS facilities, leased space or on IRS systems. Contractors employed by the Department of the Treasury. Permanent and temporary employees of banks contracted to perform Lockbox activities for the IRS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The provisions of the Privacy Act from which this system of records is exempt pursuant to 5 U.S.C. 552a(k)(5) are as follows: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). (See 31 CFR 1.36.)

[FR Doc. E5–6588 Filed 11–25–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Office of Research and Development; Government Owned Invention Available for Licensing

AGENCY: Office of Research and Development, VA.

ACTION: Notice of Government owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or Cooperative Research and Development Agreements (CRADA) Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Amy E. Centanni, Department of Veterans Affairs, Director, Technology Transfer Program, Office of Research and Development, 810 Vermont Avenue, NW., Washington, DC 20420; fax: 202–254–0255; e-mail at: *amy.centanni@mail.va.gov.* Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: U.S. Patent Application No. 11/113,786 ''Quantitation of Endothelial Microparticles.''

Dated: November 18, 2005.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. 05–23299 Filed 11–25–05; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 70, No. 227

Monday, November 28, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Supplemental Environmental Impact Statement for the Proposed Rueter-Hess Reservoir Expansion Project, Parker, CO

Correction

In notice document 05–22808 beginning on page 69961 in the issue of Friday, November 18, 2005, make the following corrections:

1. On page 69961, in the third column, under **SUMMARY**, in the tenth line, after ''Corps Permit #199980472.'' add this sentence, ''The Final EIS was published in July 2003, and the Record of Decision was signed in February 2004.''

2. On the same page, in the same column, under **ADDRESSES**, in the seventh line, the e–mail address is corrected to read, *Rodney.J.Schwartz@usace.army.mil*.

FR Doc. C5–22808 Filed 11–25–05; 8:45 am]

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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/laws.html*.

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H.R. 2490/P.L. 109–107
To designate the facility of the United States Postal Service located at 442 West Hamilton Street, Allentown, Pennsylvania, as the "Mayor Joseph S. Daddona Memorial Post Office". (Nov. 22, 2005; 119 Stat. 2289)

H.R. 2862/P.L. 109–108
Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 (Nov. 22, 2005; 119 Stat. 2290)

H.R. 3339/P.L. 109–109
To designate the facility of the United States Postal Service located at 2061 South Park Avenue in Buffalo, New York, as the "James T. Molloy Post Office Building". (Nov. 22, 2005; 119 Stat. 2350)

S. 161/P.L. 109–110

Northern Arizona Land Exchange and Verde River Basin Partnership Act of 2005 (Nov. 22, 2005; 119 Stat. 2351)

S. 1234/P.L. 109–111

Veterans' Compensation Cost-of-Living Adjustment Act of 2005 (Nov. 22, 2005; 119 Stat. 2362)

S. 1713/P.L. 109–112

Iran Nonproliferation Amendments Act of 2005 (Nov. 22, 2005; 119 Stat. 2366)

S. 1894/P.L. 109–113

To amend part E of title IV of the Social Security Act to provide for the making of foster care maintenance payments to private for-profit agencies. (Nov. 22, 2005; 119 Stat. 2371)

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500–699	(869–056–00076–6)	30.00	Apr. 1, 2005
700–1699	(869–056–00077–4)	61.00	Apr. 1, 2005
1700–End	(869–056–00078–2)	30.00	Apr. 1, 2005
25	(869–056–00079–1)	63.00	Apr. 1, 2005
26 Parts:			
§§ 1.0–1–1.60	(869–056–00080–4)	49.00	Apr. 1, 2005
§§ 1.61–1.169	(869–056–00081–2)	63.00	Apr. 1, 2005
§§ 1.170–1.300	(869–056–00082–1)	60.00	Apr. 1, 2005
§§ 1.301–1.400	(869–056–00083–9)	46.00	Apr. 1, 2005
§§ 1.401–1.440	(869–056–00084–7)	62.00	Apr. 1, 2005
§§ 1.441–1.500	(869–056–00085–5)	57.00	Apr. 1, 2005
§§ 1.501–1.640	(869–056–00086–3)	49.00	Apr. 1, 2005
§§ 1.641–1.850	(869–056–00087–1)	60.00	Apr. 1, 2005
§§ 1.851–1.907	(869–056–00088–0)	61.00	Apr. 1, 2005
§§ 1.908–1.1000	(869–056–00089–8)	60.00	Apr. 1, 2005
§§ 1.1001–1.1400	(869–056–00090–1)	61.00	Apr. 1, 2005
§§ 1.1401–1.1550	(869–056–00091–0)	55.00	Apr. 1, 2005
§§ 1.1551–End	(869–056–00092–8)	55.00	Apr. 1, 2005
2–29	(869–056–00093–6)	60.00	Apr. 1, 2005
30–39	(869–056–00094–4)	41.00	Apr. 1, 2005
40–49	(869–056–00095–2)	28.00	Apr. 1, 2005
50–299	(869–056–00096–1)	41.00	Apr. 1, 2005

Title	Stock Number	Price	Revision Date
300–499	(869–056–00097–9)	61.00	Apr. 1, 2005
500–599	(869–056–00098–7)	12.00	[5]Apr. 1, 2005
600–End	(869–056–00099–5)	17.00	Apr. 1, 2005
27 Parts:			
1–199	(869–056–00100–2)	64.00	Apr. 1, 2005
200–End	(869–056–00101–1)	21.00	Apr. 1, 2005
28 Parts:			
0–42	(869–056–00102–9)	61.00	July 1, 2005
43–End	(869–056–00103–7)	60.00	July 1, 2005
29 Parts:			
0–99	(869–056–00104–5)	50.00	July 1, 2005
100–499	(869–056–00105–3)	23.00	July 1, 2005
500–899	(869–056–00106–1)	61.00	July 1, 2005
900–1899	(869–056–00107–0)	36.00	[7]July 1, 2005
1900–1910 (§§ 1900 to 1910.999)	(869–056–00108–8)	61.00	July 1, 2005
1910 (§§ 1910.1000 to end)	(869–056–00109–6)	58.00	July 1, 2005
1911–1925	(869–056–00110–0)	30.00	July 1, 2005
1926	(869–056–00111–8)	50.00	July 1, 2005
1927–End	(869–056–00112–6)	62.00	July 1, 2005
30 Parts:			
1–199	(869–056–00113–4)	57.00	July 1, 2005
200–699	(869–056–00114–2)	50.00	July 1, 2005
700–End	(869–056–00115–1)	58.00	July 1, 2005
31 Parts:			
0–199	(869–056–00116–9)	41.00	July 1, 2005
200–499	(869–056–00117–7)	33.00	July 1, 2005
500–End	(869–056–00118–5)	33.00	July 1, 2005
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–056–00119–3)	61.00	July 1, 2005
191–399	(869–056–00120–7)	63.00	July 1, 2005
400–629	(869–056–00121–5)	50.00	July 1, 2005
630–699	(869–056–00122–3)	37.00	July 1, 2005
700–799	(869–056–00123–1)	46.00	July 1, 2005
800–End	(869–056–00124–0)	47.00	July 1, 2005
33 Parts:			
1–124	(869–056–00125–8)	57.00	July 1, 2005
125–199	(869–056–00126–6)	61.00	July 1, 2005
200–End	(869–056–00127–4)	57.00	July 1, 2005
34 Parts:			
1–299	(869–056–00128–2)	50.00	July 1, 2005
300–399	(869–056–00129–1)	40.00	[7]July 1, 2005
400–End & 35	(869–056–00130–4)	61.00	July 1, 2005
36 Parts:			
1–199	(869–056–00131–2)	37.00	July 1, 2005
200–299	(869–056–00132–1)	37.00	July 1, 2005
300–End	(869–056–00133–9)	61.00	July 1, 2005
37	(869–056–00134–7)	58.00	July 1, 2005
38 Parts:			
0–17	(869–056–00135–5)	60.00	July 1, 2005
18–End	(869–056–00136–3)	62.00	July 1, 2005
39	(869–056–00139–1)	42.00	July 1, 2005
40 Parts:			
1–49	(869–056–00138–0)	60.00	July 1, 2005
50–51	(869–056–00139–8)	45.00	July 1, 2005
52 (52.01–52.1018)	(869–056–00140–1)	60.00	July 1, 2005
52 (52.1019–End)	(869–056–00141–0)	61.00	July 1, 2005
53–59	(869–056–00142–8)	31.00	July 1, 2005
60 (60.1–End)	(869–056–00143–6)	58.00	July 1, 2005
60 (Apps)	(869–056–00144–4)	57.00	July 1, 2005
61–62	(869–056–00145–2)	45.00	July 1, 2005
63 (63.1–63.599)	(869–056–00146–1)	58.00	July 1, 2005
63 (63.600–63.1199)	(869–056–00147–9)	50.00	July 1, 2005
63 (63.1200–63.1439)	(869–056–00148–7)	50.00	July 1, 2005
63 (63.1440–63.6175)	(869–056–00149–5)	32.00	July 1, 2005
63 (63.6580–63.8830)	(869–056–00150–9)	32.00	July 1, 2005
63 (63.8980–End)	(869–056–00151–7)	35.00	[7]July 1, 2005
64–71	(869–056–00152–5)	29.00	July 1, 2005
72–80	(869–056–00153–5)	62.00	July 1, 2005
81–85	(869–056–00154–1)	60.00	July 1, 2005
86 (86.1–86.599–99)	(869–056–00155–0)	58.00	July 1, 2005
86 (86.600–1–End)	(869–056–00156–8)	50.00	July 1, 2005
87–99	(869–056–00157–6)	60.00	July 1, 2005
100–135	(869–056–00158–4)	45.00	July 1, 2005
136–149	(869–056–00159–2)	61.00	July 1, 2005
150–189	(869–056–00160–6)	50.00	July 1, 2005
190–259	(869–056–00161–4)	39.00	July 1, 2005
260–265	(869–056–00162–2)	50.00	July 1, 2005
266–299	(869–056–00163–1)	50.00	July 1, 2005
300–399	(869–056–00164–9)	42.00	July 1, 2005
400–424	(869–056–00165–7)	56.00	[8]July 1, 2005
425–699	(869–056–00166–5)	61.00	July 1, 2005
700–789	(869–056–00167–3)	61.00	July 1, 2005
790–End	(869–056–00168–1)	61.00	July 1, 2005
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–056–00169–0)	24.00	July 1, 2005
101	(869–056–00170–3)	21.00	July 1, 2005
102–200	(869–056–00171–1)	56.00	July 1, 2005
201–End	(869–056–00172–0)	24.00	July 1, 2005
42 Parts:			
1–399	(869–052–00171–6)	61.00	Oct. 1, 2004
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
*430–End	(869–056–00175–4)	64.00	Oct. 1, 2005
43 Parts:			
1–999	(869–052–00174–1)	56.00	Oct. 1, 2004
1000–end	(869–052–00175–9)	62.00	Oct. 1, 2004
44	(869–056–00178–9)	50.00	Oct. 1, 2005
45 Parts:			
*1–199	(869–056–00179–7)	60.00	Oct. 1, 2005
200–499	(869–056–00180–1)	34.00	Oct. 1, 2005
500–1199	(869–052–00179–1)	56.00	Oct. 1, 2004
1200–End	(869–056–00182–7)	61.00	Oct. 1, 2005
46 Parts:			
1–40	(869–052–00181–3)	46.00	Oct. 1, 2004
41–69	(869–056–00184–3)	39.00	[9]Oct. 1, 2005
70–89	(869–056–00185–1)	14.00	[9]Oct. 1, 2005
90–139	(869–052–00184–8)	44.00	Oct. 1, 2004
140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–056–00188–6)	34.00	[9]Oct. 1, 2005
166–199	(869–052–00187–2)	46.00	Oct. 1, 2004
200–499	(869–052–00188–1)	40.00	Oct. 1, 2004
500–End	(869–052–00189–9)	25.00	Oct. 1, 2004
47 Parts:			
0–19	(869–052–00190–2)	61.00	Oct. 1, 2004
20–39	(869–052–00191–1)	46.00	Oct. 1, 2004
40–69	(869–052–00192–9)	40.00	Oct. 1, 2004
70–79	(869–052–00193–8)	63.00	Oct. 1, 2004
80–End	(869–052–00194–5)	61.00	Oct. 1, 2004
48 Chapters:			
1 (Parts 1–51)	(869–052–00195–3)	63.00	Oct. 1, 2004
1 (Parts 52–99)	(869–052–00196–1)	49.00	Oct. 1, 2004
2 (Parts 201–299)	(869–052–00197–0)	50.00	Oct. 1, 2004
3–6	(869–052–00198–8)	34.00	Oct. 1, 2004
7–14	(869–052–00199–6)	56.00	Oct. 1, 2004
15–28	(869–052–00200–3)	47.00	Oct. 1, 2004

Title	Stock Number	Price	Revision Date
29–End	(869–052–00201–1)	47.00	Oct. 1, 2004
49 Parts:			
1–99	(869–052–00202–0)	60.00	Oct. 1, 2004
100–185	(869–052–00203–8)	63.00	Oct. 1, 2004
186–199	(869–052–00204–6)	23.00	Oct. 1, 2004
200–399	(869–052–00205–4)	64.00	Oct. 1, 2004
400–599	(869–052–00206–2)	64.00	Oct. 1, 2004
600–999	(869–056–00210–6)	19.00	Oct. 1, 2005
1000–1199	(869–052–00208–9)	28.00	Oct. 1, 2004
1200–End	(869–052–00209–7)	34.00	Oct. 1, 2004
50 Parts:			
1–16	(869–052–00210–1)	11.00	Oct. 1, 2004
17.1–17.95	(869–052–00211–9)	64.00	Oct. 1, 2004
17.96–17.99(h)	(869–052–00212–7)	61.00	Oct. 1, 2004
17.99(i)–end and 17.100–end	(869–052–00213–5)	47.00	Oct. 1, 2004
18–199	(869–052–00214–3)	50.00	Oct. 1, 2004
200–599	(869–052–00215–1)	45.00	Oct. 1, 2004
600–End	(869–052–00216–0)	62.00	Oct. 1, 2004
CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
Complete 2005 CFR set		1,342.00	2005
Microfiche CFR Edition:			
Subscription (mailed as issued)		325.00	2005
Individual copies		4.00	2005
Complete set (one-time mailing)		325.00	2004
Complete set (one-time mailing)		298.00	2003

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2005. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.