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

WHEN: Wednesday, January 11, 2006
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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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 COMMERCE

Economic Development Administration

13 CFR Parts 300, 301, 304 and 308

[Docket No.: 050729210–5325–04]

RIN 0610–AA63

Economic Development Administration Reauthorization Act of 2004 Implementation; Regulatory Revision

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Interim final rule; amendments.

SUMMARY: The Economic Development Administration (''EDA'') published an interim final rule in the **Federal Register** on August 11, 2005. EDA is publishing this interim final rule to effect those changes to the August 11, 2005 interim final rule specified in the conference report, accompanying the FY 2006 Science, State, Justice, Commerce and Related Agencies Appropriations Act. Capitalized terms used but not otherwise defined in this interim final rule have the meanings ascribed to them in the August 11, 2005 interim final rule.

DATES: This rule is effective as of December 15, 2005.

FOR FURTHER INFORMATION CONTACT: Hina Shaikh, Esq., Attorney Advisor, Office of Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4687.

SUPPLEMENTARY INFORMATION:

Preamble

EDA published an interim final rule in the **Federal Register** (70 FR 47002) on August 11, 2005. The interim final rule reflects the amendments made to EDA's authorizing statute, the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 et seq.) (''PWEDA''), by the Economic Development Administration Reauthorization Act of 2004 (Pub. L. 108–373). In addition to tracking the statutory amendments to PWEDA, the interim final rule reflects EDA's current practices and policies in administering its economic development programs that have evolved since the promulgation of EDA's former regulations. The interim final rule provided for a public comment period from August 11, 2005 through October 11, 2005. Additionally, on September 1, 2005, EDA held a public hearing on the August 11, 2005 interim final rule.

On September 30, 2005, EDA published a final rule in the **Federal Register** (70 FR 57124) delaying the effective date, from October 1, 2005 until November 14, 2005, of (i) Section 304.2(c)(2) of the interim final rule, pertaining to membership of a District Organization's governing body; and (ii) Section 301.4 of the interim final rule, as the provisions of this section pertain to Investment Rates for EDA Planning Investments. The September 30, 2005 final rule also extended the deadline for submitting public comments on the interim final rule from October 11, 2005 until November 14, 2005. All other provisions of the interim final rule became effective on October 1, 2005. On November 14, 2005, EDA published another final rule in the **Federal Register** (70 FR 69053) delaying the effective date, from November 14, 2005 until January 31, 2006, of those provisions of the interim final rule for which the effective date was previously delayed by the final rule published on September 30, 2005.

The conference report (H.R. Conf. Rep. No. 109–272; the ''Conference Report'') accompanying the FY 2006 Science, State, Justice, Commerce and Related Agencies Appropriations Act (Pub. L. 109–108) expresses Congressional intent as to specific changes to EDA's interim final rule. EDA is publishing this interim final rule to effect only those changes to the August 11, 2005 interim final rule specified in the Conference Report.

EDA will consider and respond to all comments received during the public comment period on all aspects of this rulemaking, and will make additional revisions to the August 11, 2005 interim final rule in publishing a final rule during 2006. All section citations used herein refer to those same sections of the August 11, 2005 interim final rule.

Section 300.3—Definitions

In Section 300.3, the definition of ''*Private Sector Representative*'' is expanded from the definition set forth in the August 11, 2005 interim final rule and now includes a designee of any senior management official or executive holding a key decision-making position in any for-profit enterprise.

Section 301.4—Investment Rates

The August 11, 2005 interim final rule provided maximum allowable Investment Rate categories of 30% and 40% for those Regions eligible for Investment Assistance under PWEDA, but which are experiencing lower levels of economic distress. As discussed in the Conference Report, Table 1 in Section 301.4 is revised to show that projects located in Regions demonstrating (i) a 24-month unemployment rate at least 1% greater than the national average or (ii) per capita income not more than 80% of the national average will be eligible to receive a maximum allowable Investment Rate of 50%. This revision eliminates the 30% and 40% maximum allowable Investment Rate categories. The higher threshold levels of economic distress for the 60%, 70% and 80% maximum allowable Investment Rate categories remain the same as provided in the August 11, 2005 interim final rule.

Subsection 301.4(b) of the August 11, 2005 interim final rule never became effective to the extent that it pertains to Investment Rates for EDA Planning Investments (see the October 1, 2005 and November 14, 2005 final rules delaying the effective date for this provision). Accordingly, subsection 306.3(b)(2) and (3) of EDA's former regulations continued to apply. This interim final rule replaces section 306.3(b)(2) and (3) of EDA's former regulations and revises section 301.4(b) of the August 11, 2005 interim final rule to the extent that it applies to Planning Investments.

Specifically, this interim final rule includes a new subsection titled *Projects Under Part 303,* which includes the following provisions for determining the Investment Rates for Planning Investments: (i) All Planning

Investments will receive a minimum Investment Rate of 50%; (ii) except as otherwise provided in Section 204(c) of PWEDA, the maximum allowable Investment Rate for Planning Investments will be the maximum allowable Investment Rate set forth in Table 1 of Section 301.4 for the most economically distressed county or other equivalent political unit (e.g., parish) within the Region; (iii) the maximum allowable Investment Rate will not exceed 80%; and (iv) in compelling circumstances, the Assistant Secretary may waive the requirement in paragraph (ii) above. The Assistant Secretary cannot delegate the authority to grant this waiver.

Section 304.2—District Organizations: Formation, Organizational Requirements and Operations

Subsection 304.2(c)(2) of the August 11, 2005 interim final rule requires that a District Organization's governing body must include a majority of Private Sector Representatives. This provision, however, never became effective as the October 1, 2005 and November 14, 2005 final rules delayed its effective date until January 31, 2006. Accordingly, Section 302.3(c) of EDA's former regulations continued to apply. This interim final rule replaces Section 302.3(c) of EDA's former regulations and revises Section 304.2(c) of the August 11, 2005 interim final rule as follows: (i) A District Organization's governing body must include at least one (1) Private Sector Representative, together with one (1) or more of the following: Executive Directors of Chambers of Commerce, or representatives of institutions of post-secondary education, workforce development groups, or labor groups, all of which must comprise in the aggregate a minimum of 35% of the District Organization's governing body; and (ii) if the District Organization demonstrates an inability to locate a Private Sector Representative to serve on its governing body following extensive due diligence (acceptable to EDA), the Assistant Secretary may waive the Private Sector Representative requirement. This interim final rule also adds a provision stating that the District Organization's governing body will also have at least a simple majority of its membership who are elected officials and/or employees of a general purpose unit of local government who have been appointed to represent the government.

Subsection 304.2(d) of the August 11, 2005 interim final rule provided that District Organizations may contract for services to accomplish approved scopes of work for Planning Investments. This subsection is revised in this interim final rule to specify that the District Organization will engage in the full range of economic development activities listed in its EDA-approved CEDS, which may include (i) coordinating and implementing economic development activities in the District; (ii) carrying out economic development research, planning, implementation and advisory functions identified in the CEDS; and (iii) coordinating the development and implementation of the CEDS with other local, State, federal and private organizations. This subsection continues to give District Organizations the discretion to contract for services as necessary.

Section 304.3—District Modification and Termination

Subsection 304.3(b)(2) of the August 11, 2005 interim final rule provides that EDA may terminate a Region's designation as an Economic Development District when EDA determines that the District Organization fails to execute its CEDS according to the development, implementation and other performance measures set forth in the CEDS. This interim final rule adds a new subsection (c) to Section 304.3 to clarify that prior to terminating a District's designation under subsection 304.3(b)(2), EDA will (a) consult with the District Organization and (b) consider all facts and circumstances surrounding the District Organization's operations. New subsection (c) also provides that EDA will not terminate a District's designation based on circumstances beyond the control of the District Organization (e.g., natural disaster, plant closure, overall economic downturn, sudden and severe economic dislocation, or other situation).

Section 308.2—Performance Awards

EDA revises Section 308.2 of the August 11, 2005 interim final rule to better adhere to Section 215 of PWEDA. In subsection 308.2(b) of this interim final rule, consistent with the ''meet or exceeds'' threshold in Section 215 of PWEDA, EDA eliminates the requirement that project performance be ''exceptional.'' Additionally, this interim final rule revises and redesignates subsection 308.2(d) (new subsection 308.2(e)) to clarify that EDA will set forth in an annual FFO the requirements, qualifications, guidelines and procedures for performance awards, with all performance awards being subject to the availability of funds.

Classification

Prior notice and opportunity for public comment are not required for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Executive Order No. 12866

It has been determined that this interim final rule is significant for purposes of Executive Order 12866.

Congressional Review Act

This interim final rule is not ''major'' under the Congressional Review Act (5 U.S.C. 801 *et seq.*)

Executive Order No. 13132

Executive Order 13132 requires agencies to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in Executive Order 13132 to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' It has been determined that this interim final rule does not contain policies that have federalism implications.

List of Subjects

13 CFR Part 300

Grant administration, Grant programs, Financial assistance, Private sector representative.

13 CFR Part 301

Grant administration, Grant programs, Eligibility requirements, Applicant and application requirements, Economic distress levels, Investment rates, Proposal selection.

13 CFR Part 304

Grant administration, Grant programs, Economic development district, Organizational requirements, District modification and Termination, performance evaluations.

13 CFR Part 308

Grant administration, Grant programs, Performance awards, Planning performance awards.

Regulatory Text

■ For reasons stated in the preamble, Chapter III of Title 13 of the CFR is amended as follows:

PART 300—GENERAL INFORMATION

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 3121; 42 U.S.C. 3122; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

■ 2. Amend § 300.3 by revising the definition of ''*Private Sector Representative*'' to read as follows:

§ 300.3 Definitions.

* * * * *

Private Sector Representative means, with respect to any for-profit enterprise, any senior management official or executive holding a key decision-making position, or that person's designee.

* * * * *

PART 301—ELIGIBILITY, INVESTMENT RATE AND PROPOSAL AND APPLICATION REQUIREMENTS

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 42 U.S.C. 3121; 42 U.S.C. 3141–3147; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3175; 42 U.S.C. 3192; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3233; Department of Commerce Delegation Order 10–4.

■ 2. Amend § 301.4 by revising paragraph (b)(1)(ii); by redesignating paragraphs (b)(3) and (b)(4) as paragraphs (b)(4) and (b)(5), respectively; and by adding new paragraph (b)(3) to read as follows:

§ 301.4 Investment Rates.

* * * * *

(b) * * *

(1) * * *

(ii) *Table 1.* Table 1 of this paragraph sets forth the maximum allowable Investment Rate for Projects located in Regions subject to certain levels of economic distress. In cases where Table 1 produces divergent results (i.e., where Table 1 produces more than one (1) maximum allowable Investment Rate based on the Region's levels of economic distress), the higher Investment Rate produced by Table 1 shall be the maximum allowable Investment Rate for the Project.

TABLE 1

Projects located in regions in which:	Maximum allowable investment rates (percentage)
(A) The twenty-four (24) month unemployment rate is at least 225% of the national average; or	80
(B) The per capita income is not more than 50% of the national average	80
(C) The twenty-four (24) month unemployment rate is at least 200% of the national average; or	70
(D) The per capita income is not more than 60% of the national average	70
(E) The twenty-four (24) month unemployment rate is at least 175% of the national average; or	60
(F) The per capita income is not more than 65% of the national average	60
(G) The twenty-four (24) month unemployment rate is at least 1% greater than the national average; or	50
(H) The per capita income is not more than 80% of the national average	50

* * * * *

(3) *Projects under part 303.*

(i) The minimum Investment Rate for Projects under part 303 of this Chapter shall be fifty (50) percent.

(ii) Except as otherwise provided in paragraph (iii) of this section or in paragraph (b)(5), the maximum allowable Investment Rate for Projects under part 303 of this chapter shall be the maximum allowable Investment Rate set forth in Table 1 for the most economically distressed county or other equivalent political unit (e.g., parish) within the Region. The maximum allowable Investment Rate shall not exceed eighty (80) percent.

(iii) In compelling circumstances, the Assistant Secretary may waive the application of the first sentence in paragraph (ii) of this section. The Assistant Secretary shall not delegate the authority to grant a waiver under this paragraph.

* * * * *

PART 304—ECONOMIC DEVELOPMENT DISTRICTS

■ 1. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 3122; 42 U.S.C. 3171; 42 U.S.C. 3172; 42 U.S.C. 3196; Department of Commerce Organization Order 10–4.

■ 2. Amend § 304.2 by revising paragraphs (c)(2) and (d) to read as follows:

§ 304.2 District Organizations: Formation, organizational requirements and operations.

* * * * *

(c) * * *

(2) The District Organization must demonstrate that its governing body is broadly representative of the principal economic interests of the Region, and, unless otherwise prohibited by applicable State or local law, must include at least one (1) Private Sector Representative and one (1) or more of the following: Executive Directors of Chambers of Commerce, or representatives of institutions of post-secondary education, workforce development groups or labor groups, all of which must comprise in the aggregate a minimum of thirty-five (35) percent of the District Organization's governing body. The governing body shall also have at least a simple majority of its membership who are elected officials and/or employees of a general purpose unit of State, local or Indian tribal government who have been appointed to represent the government. Upon the District Organization's showing of its inability to locate a Private Sector Representative to serve on its governing body following extensive due diligence, the Assistant Secretary may waive the Private Sector Representative requirement. The Assistant Secretary shall not delegate the authority to grant a waiver under this paragraph.

* * * * *

(d) *Operations.*

(1) The District Organization shall engage in the full range of economic development activities listed in its EDA-approved CEDS. These activities may include:

(i) Coordinating and implementing economic development activities in the District;

(ii) Carrying out economic development research, planning, implementation and advisory functions identified in the CEDS; and

(iii) Coordinating the development and implementation of the CEDS with other local, State, federal and private organizations.

(2) The District Organization may at its option contract for services to accomplish the activities listed above.

■ 3. Amend § 304.3 by redesignating paragraph (c) as paragraph (d); and by adding new paragraph (c) to read as follows:

§ 304.3 District modification and termination.

* * * * *

(c) Prior to terminating a District Organization under paragraph (b)(2) of this section, EDA will consult with the District Organization and consider all facts and circumstances regarding the District Organization's operations. EDA will not terminate a District's designation based on circumstances beyond the control of the District Organization (e.g., natural disaster, plant closure, overall economic downturn, sudden and severe economic dislocation, or other situation).

* * * * *

PART 308—PERFORMANCE MEASURES

■ 1. The authority citation for part 308 continues to read as follows:

Authority: 42 U.S.C. 3151; 42 U.S.C. 3154a; 42 U.S.C. 3154b; Department of Commerce Delegation Order 10–4.

■ 2. Amend § 308.2 by revising it to read as follows:

§ 308.2 Performance awards.

(a) A Recipient of Investment Assistance under parts 305 or 307 of this chapter may receive a performance award in connection with an Investment made on or after the date of enactment of Section 215 of PWEDA in an amount not to exceed ten (10) percent of the amount of the Investment award.

(b) To receive a performance award, a Recipient must demonstrate Project performance in one (1) or more of the areas listed in this paragraph, weighted at the discretion of the Assistant Secretary:

(1) Meet or exceed the Recipient's projection of jobs created;

(2) Meet or exceed the Recipient's projection of private sector capital invested;

(3) Meet or exceed target dates for Project start and completion stated at the time of Investment approval;

(4) Fulfill the proposal evaluation criteria set forth in § 301.8 of this chapter; or

(5) Demonstrate other unique Project performance characteristics as determined by the Assistant Secretary.

(c) A Recipient may receive a performance award no later than three (3) years following the Project's closeout.

(d) A performance award may fund up to one hundred (100) percent of the cost of an eligible Project or any other authorized activity under PWEDA. For the purpose of meeting the non-federal share requirement of PWEDA or any other statute, the amount of a performance award shall be treated as non-federal funds.

(e) The applicable FFO will set forth the requirements, qualifications, guidelines and procedures for performance awards to be made during the applicable fiscal year, with all performance awards being subject to the availability of funds.

Dated: December 7, 2005.

Benjamin Erulkar,

Chief Counsel, Economic Development Administration.

[FR Doc. 05–23927 Filed 12–14–05; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Parts 301 and 304

[Docket No.: 050729210–5331–05]

RIN 0610–AA63

Economic Development Administration Reauthorization Act of 2004 Implementation; Regulatory Revision

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Final rule; change of effective date.

SUMMARY: On November 14, 2005, the Economic Development Administration (''EDA'') published a final rule in the **Federal Register** delaying the effective date, from November 14, 2005 until January 31, 2006, of certain provisions of EDA's interim final rule originally published in the **Federal Register** on August 11, 2005. EDA is publishing this final rule to revoke the November 14, 2005 final rule.

The conference report accompanying the FY 2006 Science, State, Justice, Commerce and Related Agencies Appropriations Act expresses Congressional intent as to specific changes to EDA's August 11, 2005 interim final rule. The changes specified in the conference report include changes to those provisions of the August 11, 2005 interim final for which the effective date was delayed by the final rule published on November 14, 2005. Concurrent with the publication of this final rule, EDA is publishing in the **Federal Register** an interim final rule to effect those changes to the August 11, 2005 interim final rule specified in the conference report. Capitalized terms used but not otherwise defined in this final rule have the meanings ascribed to them in the August 11, 2005 interim final rule.

DATES: The delayed effective date of January 31, 2006 for the following provisions of the August 11, 2005 interim final rule is changed to December 15, 2005: (i) Section 304.2(c)(2), pertaining to membership of a District Organization's governing body; and (ii) Section 301.4, as the provisions of this section relate to Investment Rates for EDA Planning Investments.

FOR FURTHER INFORMATION CONTACT: Hina Shaikh, Esq., Attorney Advisor, Office of Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4687.

SUPPLEMENTARY INFORMATION: EDA published an interim final rule in the **Federal Register** (70 FR 47002) on August 11, 2005. The interim final rule reflects the amendments made to EDA's authorizing statute, the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*) (''PWEDA''), by the Economic Development Administration Reauthorization Act of 2004 (Pub. L. 108–373). In addition to tracking the statutory amendments to PWEDA, the interim final rule reflects EDA's current practices and policies in administering its economic development programs that have evolved since the promulgation of EDA's former regulations. The interim final rule provided for a public comment period from August 11, 2005 through October 11, 2005. Additionally, on September 1, 2005, EDA held a public hearing on the August 11, 2005 interim final rule.

On September 30, 2005, EDA published a final rule in the **Federal Register** (70 FR 57124) delaying the effective date, from October 1, 2005 until November 14, 2005, of (i) Section 304.2(c)(2) of the interim final rule, pertaining to membership of a District Organization's governing body; and (ii) Section 301.4 of the interim final rule, as the provisions of this section pertain to Investment Rates for EDA Planning Investments. The September 30, 2005 final rule also extended the deadline for submitting public comments on the interim final rule from October 11, 2005 until November 14, 2005. All other

provisions of the interim final rule became effective on October 1, 2005. On November 14, 2005, EDA published another final rule in the **Federal Register** (70 FR 69053) delaying the effective date, from November 14, 2005 until January 31, 2006, of those provisions of the interim final rule for which the effective date was previously delayed by the final rule published on September 30, 2005.

The conference report (H.R. Conf. Rep. No. 109–272; passed by the House of Representatives and the Senate on November 9, 2005 and November 16, 2005, respectively) expresses Congressional intent as to specific changes to the August 11, 2005 interim final rule. The changes specified in the conference report include (but are not limited to) changes to those provisions of the August 11, 2005 interim final for which the effective date was most recently delayed by the final rule published on November 14, 2005.

EDA is publishing this final rule to revoke the November 14, 2005 final rule. Concurrent with the publication of this final rule, EDA is publishing in the **Federal Register** an interim final rule to effect those changes to the August 11, 2005 interim final rule specified in the conference report. EDA will consider and respond to all comments received during the public comment period on all aspects of this rulemaking, and will make additional revisions to the August 11, 2005 interim final rule in publishing a final rule during 2006.

Classification

Prior notice and opportunity for public comment are not required for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Executive Order No. 12866

It has been determined that this final rule is not significant for purposes of Executive Order 12866.

Congressional Review Act

This final rule is not ''major'' under the Congressional Review Act (5 U.S.C. 801 *et seq.*).

Executive Order No. 13132

Executive Order 13132 requires agencies to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in Executive Order 13132 to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' It has been determined that this final rule does not contain policies that have federalism implications.

Dated: December 12, 2005.

Benjamin Erulkar,

Chief Counsel, Economic Development Administration.

[FR Doc. 05–24110 Filed 12–14–05; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21381; Airspace Docket No. 05–ASW–2]

RIN 2120–AA66

Establishment of Area Navigation Routes; Southwestern and South Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes three area navigation (RNAV) routes over Southwestern and South Central United States in support of the High Altitude Redesign (HAR) program. The FAA is taking this action to enhance safety and to improve the efficient use of the navigable airspace.

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 June 22, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish three RNAV routes (Q–20, Q–22, and Q–24) over Southwestern and South Central United States in support of the HAR program (70 FR 36085). The FAA believes that establishing Q–20, Q–22, and Q–24 will provide greater freedom to properly equipped users and to achieve the economic benefits of flying user-selected, non-restrictive routings.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received in response to the proposal. With the exception of editorial changes, this amendment is the same as that proposed in the notice.

High Altitude RNAV routes are published in paragraph 2006 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 high altitude RNAV routes listed in this document will be published subsequently in the order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing three RNAV routes (Q–20, Q–22, and Q–24) over the Southwestern and South Central United States within the airspace assigned to the Albuquerque and Fort Worth Air Route Traffic Control Centers (ARTCC). The FAA believes that this action will enhance safety and facilitate the more flexible and efficient use of the navigable airspace for en route instrument flight rules operations within the Albuquerque and the Fort Worth ARTCCs' areas of responsibility.

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.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with Paragraph 311(a) of FAA Order 1050.1E, Policies and Procedures for Considering Environmental Impacts. This airspace

action is not expected to cause any potentially significant 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 2006—Area Navigation Routes

* * * * *

Q–20 CNX to JCT [New]

CNX VORTAC
(lat. 34°22′01″ N., long. 105°40′41″ W)
HONDS FIX
(lat. 33°33′60″ N., long. 104°51′12″ W)
UNNOS WP
(lat. 32°57′00″ N., long. 103°56′00″ W)
FUSCO WP
(lat. 31°11′02″ N., long. 101°19′30″ W)
JCT VORTAC
(lat. 30°35′53″ N., long. 099°49′03″ W)

* * * * *

Q–22 GUSTI to CATLN [New]

GUSTI FIX
(lat. 29°58′15″ N., long. 092°54′35″ W)
OYSTY FIX
(lat. 30°28′15″ N., long. 090°11′49″ W)
RUBAE WP
(lat. 30°55′27″ N., long. 088°22′11″ W)
CATLN FIX
(lat. 31°18′26″ N., long. 087°34′48″ W)

* * * * *

Q–24 LCH to PAYTN [New]

LCH VORTAC
(lat. 30°08′29″ N., long. 093°06′20″ W)
BTR VORTAC
(lat. 30°29′06″ N., long. 091°17′39″ W)
IRUBE WP
(lat. 31°00′16″ N., long. 088°56′19″ W)
PAYTN FIX
(lat. 31°28′04″ N., long. 087°53′08″ W)

* * * * *

Issued in Washington, DC, on December 8, 2005.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 05–24069 Filed 12–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 31 and 32

[TD 9233]

RIN 1545–BC89

Sickness or Accident Disability Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance regarding the treatment of payments made on account of sickness or accident disability under a workers' compensation law for purposes of the Federal Insurance Contributions Act (FICA).

DATES: *Effective Date:* These regulations are effective December 15, 2005.

Applicability Date: These regulations apply to payments on account of sickness or accident disability payments made on or after December 15, 2005.

FOR FURTHER INFORMATION CONTACT: David Ford (202) 622–6040 (not toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR parts 31 and 32 under section 3121(a)(2) of the Internal Revenue Code (Code). This section excepts from wages for Federal Insurance Contributions Act (FICA) purposes payments made on account of sickness or accident disability that are received under a ''workmen's compensation law,'' hereinafter referred to as a workers' compensation law.

Proposed regulations (Reg–160315–03) under section 3121(a)(2) were published in the **Federal Register** (70 FR 12164) on March 11, 2005. No written comments responding to the notice of proposed rulemaking were received and a public hearing was not requested or held. Accordingly, the proposed regulations are adopted as final regulations. In addition, this document contains amendments to § 32.1 of the Temporary Employment Tax Regulations to provide guidance that the definition of workers' compensation law in the final regulations under § 31.3121(a)(2)–1 applies for payments on account of sickness or accident disability made on or after December 15, 2005.

Explanation of Provisions

Section 3121(a)(2)(A) of the Code excepts from ''wages'' for FICA tax purposes payments to an employee or any of his dependents on account of sickness or accident disability only if the payments are received under a workers' compensation law.

Section 3121(a)(4) provides that wages does not include any payment on account of sickness or accident disability made by an employer to or on behalf of an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for the employer. Thus, unless made under a workers' compensation law, payments received on account of sickness or accident disability are wages subject to FICA during the first 6 months the employee is out of work.

These final regulations amend § 31.3121(a)(2)–1 to provide that payments made under a statute in the nature of a workers' compensation act will be treated as having been made under a workers' compensation law and, therefore excluded from wages for FICA purposes. For income tax purposes, section 104(a)(1) excludes from gross income certain amounts received under ''workmen's compensation acts.'' Section 1.104–1(b) of the Income Tax Regulations, provides that amounts received under section 104(a)(1) include amounts received by an employee under a statute in the nature of a workers' compensation act. Thus, the final regulations align the interpretation of what constitutes payments received under a workers' compensation law for FICA purposes with § 1.104–1(b) of the Income tax regulations.

The preamble to the proposed regulations specified that § 32.1 of the Temporary Employment Tax Regulations would be amended, if needed. It is necessary to remove the reference to § 31.3121(a)(2)–1(a)(2) in the first phrase of § 32.1(a) and insert a reference to § 31.3121(a)(2)–1(d)(3) in § 32.1(a)(1) to specify that the definition of workers' compensation law applicable to payments on account of sickness or accident disability made on or after December 15, 2005, is now in final regulation § 31.3121(a)(2)–1(d)(3). No other amendments are made to § 32.1.

The preamble to the proposed regulations also specified that guidance

would be provided related to Federal Unemployment Tax Act (FUTA) to the extent necessary. The Service has concluded that no additional guidance is necessary for FUTA since these payments are made to employees of states and local governments and FUTA does not apply to services performed by state or local government employees.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In addition, because no collection of information is imposed on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small business.

Drafting Information

The principal author of these regulations is David Ford of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt/Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 31

Employment taxes; Fishing vessels; Gambling; Income taxes; Penalties; Pensions; Railroad retirement; Reporting and recordkeeping requirements; Social security; Unemployment compensation.

26 CFR Part 32

Employment taxes; Railroad retirement; Reporting and recordkeeping requirements; Social security.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 31 and 32 are amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

■ **Paragraph 1.** The authority section for part 31 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 31.3121(a)(2)–1 is amended by:

1. Revising the section heading.
2. Removing paragraph (a)(1).
3. Redesignating paragraphs (a)(2) through (a)(4) as (a)(1) through (a)(3), respectively.
4. Revising newly designated paragraph (a)(1).
5. Redesignating paragraph (d) as (f).
6. Adding new paragraphs (d) and (e).

The revisions and additions are as follows:

§ 31.3121(a)(2)–1 Payments on account of sickness or accident disability, medical or hospitalization expenses, or death.

(a) * * *

(1) Sickness or accident disability of an employee or any of his dependents, only if payment is received under a workers' compensation law;

* * * * *

(d) *Workers' compensation law.* (1) For purposes of paragraph (a)(1) of this section, a payment made under a workers' compensation law includes a payment made pursuant to a statute in the nature of a workers' compensation act.

(2) For purposes of paragraph (a)(1) of this section, a payment made under a workers' compensation law does not include a payment made pursuant to a State temporary disability insurance law.

(3) If an employee receives a payment on account of sickness or accident disability that is not made under a workers' compensation law or a statute in the nature of a workers' compensation act, the payment is not excluded from wages as defined by section 3121(a)(2)(A) even if the payment must be repaid if the employee receives a workers' compensation award or an award under a statute in the nature of a workers' compensation act with respect to the same period of absence from work.

(4) If an employee receives a payment on account of non-occupational injury sickness or accident disability such payment is not excluded from wages, as defined by section 3121(a)(2)(A).

(e) *Examples.* The following examples illustrate the principles of paragraph (d) of this section:

Example 1. A local government employee is injured while performing work-related activities. The employee is not covered by the State workers' compensation law, but is covered by a local government ordinance that requires the local government to pay the employee's full salary when the employee is out of work as a result of an injury incurred while performing services for the local government. The ordinance does not limit or otherwise affect the local government's liability to the employee for the work-related injury. The local ordinance is not a workers' compensation law, but it is in the nature of a workers' compensation act. Therefore, the salary the employee receives while out of work as a result of the work-related injury is excluded from wages under section 3121(a)(2)(A).

Example 2. The facts are the same as in *Example 1* except that the local ordinance requires the employer to continue to pay the employee's full salary while the employee is unable to work due to an injury whether or not the injury is work-related. Thus, the local ordinance does not limit benefits to instances of work-related disability. A benefit paid under an ordinance that does not limit benefits to instances of work-related injuries is not a statute in the nature of a workers' compensation act. Therefore, the salary the injured employee receives from the employer while out of work is wages subject to FICA even though the employee's injury is work-related.

Example 3. The facts are the same as in *Example 1* except that the local ordinance includes a rebuttable presumption that certain injuries, including any heart attack incurred by a firefighter or other law enforcement personnel is work-related. The presumption in the ordinance does not eliminate the requirement that the injury be work-related in order to entitle the injured worker to full salary. Therefore, the ordinance is a statute in the nature of a workers' compensation act, and the salary the injured employee receives pursuant to the ordinance is excluded from wages under section 3121(a)(2)(A).

* * * * *

PART 32—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE ACT OF DECEMBER 29, 1981 (PUB. L. 97–123)

■ **Par 3.** The authority section for part 32 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 4.** Section 32.1 is amended by:

1. Revising paragraph (a) introductory text.

2. Revising paragraph (a)(1).

The revisions and additions are as follows:

* * * * *

(a) General rule. The amount of any payment on or after January 1, 1982, made to, or on behalf of, an employee or any of his dependents on account of sickness or accident disability is not excluded from the term wages as defined in section 3121(a)(2)(A) unless such payment is—

(1) Received under a workmen's compensation law (as defined in

§ 31.3121(a)(2)–1(d)(3) for payments made on or after December 15, 2005), or

* * * * *

Mark E. Matthews,

Deputy Commissioner of Services and Enforcement.

Approved: December 1, 2005.

Eric Solomon,

Acting Deputy Assistant of the Treasury (Tax Policy).

[FR Doc. 05–23945 Filed 12–14–05; 8:45 am]

BILLING CODE 4830–01–U

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

28 CFR Part 906

[NCPPC 113]

Outsourcing of Noncriminal Justice Administrative Functions

AGENCY: National Crime Prevention and Privacy Compact Council.

ACTION: Final rule.

SUMMARY: The Compact Council, established pursuant to the National Crime Prevention and Privacy Compact Act of 1998 (Compact), is adopting, as a final rule, without change, an interim final rule which permits the outsourcing of noncriminal justice administrative functions involving access to criminal history record information (CHRI). Procedures established to permit outsourcing are required to conform with the Compact Council's interpretation of Articles IV and V of the Compact.

DATES: This rule is effective December 15, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Donna M. Uzzell, Compact Council Chairman, Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, Florida 32308–5333, telephone number (850) 410–7100.

SUPPLEMENTARY INFORMATION:

I. Background

The Compact, 42 U.S.C. 14616, establishes uniform standards and processes for the interstate and Federal-State exchange of criminal history records for noncriminal justice purposes. The Compact was approved by the Congress on October 9, 1998, (Pub. L. 105–251) and became effective on April 28, 1999, when ratified by the second state. Article VI of the Compact provides for a Compact Council that has the authority to promulgate rules and procedures governing the use of the Interstate Identification Index (III) System for noncriminal justice purposes. On December 16, 2004, the Compact Council published in the **Federal Register**, 69 FR 75243, an interim final rule with request for comments. This rule permits a third party to perform noncriminal justice administrative functions relating to the processing of CHRI maintained in the III System, subject to appropriate controls, when acting as an agent for a governmental agency or other authorized recipient of CHRI. Published in a notice elsewhere in today's edition of the **Federal Register** is the Security and Management Control Outsourcing Standard which establishes the appropriate controls.

II. Discussion of Comments on the Interim Final Rule

The 60-day comment period for the interim final rule closed on February 14, 2005. Two comments were received from a state agency.

The first comment concerned section 906.2(b). The state agency questioned the clarity of what specifically was contemplated in the exceptions to the provision that contractors, agencies, or organizations shall not be permitted to have terminal access to the III System and suggested further explanation or examples of what situations would permit contractors to have direct terminal access to the III System. The Compact, at Article V (c), provides ''Direct access to the National Identification Index by entities other than the FBI and State criminal history record repositories shall not be permitted for noncriminal justice purposes'' and 42 U.S.C. 14614(b) provides that ''Nothing in the Compact shall interfere in any manner with—(1) access, direct or otherwise, to records pursuant to—(the various laws specified in that section) or (2) any direct access to Federal criminal history records authorized by law.'' Therefore, authorized agencies (*i.e.*, FBI, state repositories, and certain agencies performing the background checks authorized under 42 U.S.C. 14614(b)) require direct access to III in order to perform their authorized functions. Although these agencies may choose not to outsource these functions, the exception language in the rule was intended to not prohibit that option.

The second comment questioned whether the Outsourcing Rule has any affect on a specific provision of the Security Clearance Information Act (SCIA) (5 U.S.C. 9101) which authorizes a State criminal history record repository to require that fingerprints accompany a SCIA record check request if certain requirements are met. Pursuant to the SCIA, the six covered federal agencies may have direct terminal access to the III to conduct record checks of individuals being considered for assignment or retention in a position with access to classified information, a critical or sensitive position, a position of public trust, etc. The SCIA also provides that ''Such a request to a State criminal history record repository shall be accompanied by the fingerprints of the individual who is the subject of the request if required by State law and if the repository uses the fingerprints in an automated fingerprint identification system.'' Accordingly, the Outsourcing Rule has no impact on this SCIA provision nor does the rule affect the state law requiring fingerprints for use in conducting a state automated fingerprint identification system record check for such purposes.

The Compact Council did not believe that any changes to the rule were necessary based on the comments; therefore, the interim final rule is being adopted as final without change.

List of Subjects in 28 CFR Part 906

Administrative practice and procedure, Intergovernmental relations, Law Enforcement, Privacy.

PART 906—OUTSOURCING OF NONCRIMINAL JUSTICE ADMINISTRATIVE FUNCTIONS

Accordingly, the interim final rule adding part 906 which was published at 69 FR 75243 on December 16, 2004, is adopted as a final rule without change.

Dated: November 23, 2005.

Donna M. Uzzell,

Compact Council Chairman.

[FR Doc. 05–24055 Filed 12–14–05; 8:45 am]

BILLING CODE 4410–02–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying

benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in January 2006. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during January 2006, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during January 2006, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during January 2006.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.70 percent for the first 20 years following the valuation date and 4.75 percent thereafter. These interest assumptions represent an increase (from those in effect for December 2005) of 1.70 percent for the first 20 years following the valuation date and are otherwise unchanged. These interest assumptions reflect the PBGC's recently updated mortality assumptions, which are effective for terminations on or after January 1, 2006. See the PBGC's final rule published December 2, 2005 (70 FR 72205), which is available at *http://edocket.access.gpo.gov/2005/pdf/05-23554.pdf.* Because the updated mortality assumptions reflect improvements in mortality, these interest assumptions are higher than they would have been using the old mortality assumptions.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 2.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent no change from those in effect for December 2005.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during January 2006, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 147, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
147	1–1–06	2–1–06	2.75	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 147, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*		*	*
147	1–1–06	2–1–06	2.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for January 2006, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of $_t$ are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
January 2006	.5700	1–20	.0475	>20	N/A	N/A.

Issued in Washington, DC, on this 12th day of December 2005.

Vincent K. Snowbarger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 05–24088 Filed 12–14–05; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–05–135]

RIN 1625–AA00

Safety Zone; Chicago New Year's Celebration, Lake Michigan, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Chicago New Year's Celebration fireworks display. This safety zone is necessary to protect vessels and spectators from potential airborne hazards during a planned fireworks display over Lake Michigan. The safety zone is intended to restrict vessels from a portion of Lake Michigan off Chicago, Illinois.

DATES: This rule is effective from 11:59 p.m. (local time) on December 31, 2005 through 12:15 a.m. (local time) on January 1, 2006.

ADDRESSES: Comments and material from the public, as well as documents indicated in this preamble as being available in the docket, are part of the docket (CGD09–05–135], and are available for inspection or copying at Commanding Officer, U.S. Coast Guard Marine Safety Unit Chicago, 215 W. 83rd Street, Suite D, Burr Ridge, IL, 60527, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST1 Kenneth Brockhouse, U.S. Coast Guard Marine Safety Unit Chicago, at (630) 986–2155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The Coast Guard was not made aware that this event was to take place with sufficient time to allow for publication of a NPRM followed by a final rule. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be impracticable and immediate action is necessary to ensure the safety of spectators and vessels during this event. During the enforcement of this safety zone, comments will be accepted and reviewed and may result in a modification to the rule.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on accidents that have occurred in other Captain of the Port zones and the explosive hazards of fireworks, the Captain of the Port Lake Michigan has determined fireworks launches in close proximity to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

The safety zone for the Chicago New Year's Celebration fireworks display will encompass all waters of Lake Michigan bounded by the arc of a circle with a 700-foot radius with its center in the approximate position 41°52′41″ N, 087°36′37″ W (inside the breakwall of Monroe Harbor). These coordinates are based upon the North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons shall comply with the instructions of the Captain of the Port Lake Michigan or his designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan, or his designated on-scene representative. The designated on-scene representative is the Patrol

Commander. The Patrol Commander can be contacted via VHF Channel 16.

Regulatory Evaluation

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

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

This finding is based on the relatively small percentage of vessels that would fall within the applicability of the regulation, the relatively small size of the limited area around the safety zone, the minimal amount of time that vessels will be restricted when the zone is being enforced. In addition, vessels that will need to enter the zone may request permission on a case-by-case basis from the Captain of the Port or the designated on-scene representatives.

Small Entities

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

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

This rule may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit through the safety zone in and around the area.

This proposed rule would not have a significant impact on a substantial number of small entities because the restrictions affect only a limited area for a brief amount of time. Further, transit through the zone may be permitted with proper authorization from the Captain of the Port Lake Michigan or his designated representative. Additionally, the opportunity to engage in recreational activities outside the limits of the safety zone will not be disrupted.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–800–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone therefore paragraph (34)(g) of the Instruction applies.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09.135 to read as follows: § 165.T09.135 Safety Zone; Chicago New Year's Celebration, Lake Michigan, Chicago, IL.

(a) *Location.* The following area is designated a safety zone: All waters of Lake Michigan bounded by the arc of a circle with a 700-foot radius with its center in the approximate position 41°52′41″ N, 87°36′37″ W (inside the breakwall of Monroe Harbor). These coordinates are based upon the North American Datum 1983 (NAD 1983).

(b) *Effective Time and Date.* This regulation is effective from 11:59 p.m. (local time) December 31, 2005 until 12:15 a.m. (local time) January 1, 2006. Captain of the Port Lake Michigan or the on scene Patrol Commander may terminate this event at anytime.

(c) *Regulations.* In accordance with the general regulations in 33 CFR 165.23, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Lake Michigan, or the designated on-scene representative.

(1) This safety zone is closed to all marine traffic, except as may be permitted by the Captain of the Port or his duly appointed representative.

(2) The ''duly appointed representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(3) Vessel operators desiring to enter or operate within the Safety Zone shall contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the Safety Zone shall comply with all directions given to them by the Captain of the Port or his representative.

Dated: December 7, 2005.

S. P. LaRochelle,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 05–24068 Filed 12–14–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7905]

Suspension of Community Eligibility

AGENCY: Mitigation Division, Federal Emergency Management Agency (FEMA), Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Mitigation Division, 500 C Street, SW., Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance

pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region I				
Connecticut: South Windsor, Town of, Hartford County.	090036	July 25, 1974, Emerg; May 1, 1980, Reg; Dec. 16, 2005, Susp.	Dec. 16, 2005 ...	Dec. 16, 2005.
Region IV				
North Carolina:				
Currituck County, Unincorporated Areas	370078	Mar. 4, 1974, Emerg; Nov. 1, 1984, Reg; Dec. 16, 2005, Susp.	.....do*	Do.
Tennessee: Benton County, Unincorporated Areas.	470218	Oct. 4, 1989, Emerg; July 2, 1991, Reg; Dec. 16, 2005, Susp.	.....do*	Do.
Camden, City of, Benton County	470010	Apr. 2, 1975, Emerg; July 17, 1986, Reg; Dec. 16, 2005, Susp.	.....do*	Do.
Region VI				
New Mexico: Jal, City of, Lea County	350030	Sept. 28, 1977, Emerg; Aug. 19, 1985, Reg; Dec. 16, 2005, Susp.	.....do*	Do.
Region VIII				
Utah:				
North Ogden, City of, Weber County	490214	Oct. 2, 1975, Emerg; Jan. 19, 1983, Reg; Dec. 16, 2005, Susp.	.....do*	Do.
Ogden, City of, Weber County	490189	Dec. 27, 1974, Emerg; Jan. 19, 1983, Reg; Dec. 16, 2005, Susp.	.....do*	Do.
Plain City, City of, Weber County	490217	Feb. 17, 1978, Emerg; May 19, 1981, Reg; Dec. 16, 2005, Susp.	.....do*	Do.
Riverdale, City of, Weber County	490190	Oct. 4, 1974, Emerg; Feb. 3, 1982, Reg; Dec. 16, 2005, Susp.	.....do*	Do.
Roy, City of, Weber County	490223	Jan. 16, 1976, Emerg; Oct. 24, 1978, Reg; Dec. 16, 2005, Susp.	.....do*	Do.
South Ogden, City of, Weber County ...	490191	Aug. 2, 1974, Emerg; Mar. 1, 1982, Reg; Dec. 16, 2005, Susp.	.....do*	Do.
Uintah, City of, Weber County	490192	Apr. 30, 1974, Emerg; May 19, 1981, Reg; Dec. 16, 2005, Susp.	.....do*	Do.
Weber County, Unincorporated Areas ..	490187	Mar. 25, 1975, Emerg; July 19, 1982, Reg; Dec. 16, 2005, Susp.	.....do*	Do.
West Haven, City of, Weber County	490249	Apr. 6, 1999, Emerg; Dec. 16, 2005, Reg; Dec. 16, 2005, Susp.	.....do*	Do.

*do = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: Dec. 9, 2005.

Michael K. Buckley,

Deputy Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 05–24062 Filed 12–14–05; 8:45 am]

BILLING CODE 9110–12–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1852

RIN: 2700–AD20

Property Administration and Reporting for Interagency Acquisitions

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This is a final rule to amend the NASA FAR Supplement (NFS) to revise clause 1852.217–70 Property Administration and Reporting to change the name of ''NASA-Defense Purchase Request'' to ''NASA-Interagency Purchase Request'' and to replace the term ''Military Department'' to ''servicing agency'' in order to permit the use of this clause in interagency acquisitions with military departments and civilian agencies.

DATES: *Effective Date:* December 15, 2005.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Seppi, NASA, Office of Procurement, Contract Management Division; (703) 553–2551; e-mail: *Marilyn.Seppi-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

This is a final rule to amend the NASA FAR Supplement (NFS) to revise clause 1852.217–70 Property Administration and Reporting to change the name of ''NASA-Defense Purchase Request'' to ''NASA-Interagency Purchase Request'' and to change the term ''Military Department'' to ''servicing agency'' in order to permit the use of this clause in interagency acquisitions with military departments and civilian agencies. This change is necessary to instruct NASA Centers to use the NASA-Interagency Purchase Request (NF–523) in all interagency acquisitions with civilian agencies and military departments. Currently, the NFS only provides the use of this clause for interagency acquisitions with Military Departments and does not address whether this clause should be utilized in interagency acquisitions with Civilian Agencies. This change is necessary to provide guidance when contracting for supplies and services with civilian agencies.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This final rule is not expected to have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because this action does not have any affect on the private business sector it only affects interagency transactions with other government agencies, military departments, and civilian agencies.

C. Paperwork Reduction Act

This final rule does not contain information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) does not apply. All comments regarding information collection should be sent to: Desk Officer for NASA; Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building; Washington, DC 20503.

List of Subjects in 48 CFR Part 1852

Government Procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR part 1852 is amended as follows:

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

■ 2. Revise section 1852.217–70 to read as follows:

1852.217–70 Property Administration and Reporting.

As prescribed in 1817.7004–7 and 1817.7005–4, insert the following clause:

Property Administration and Reporting (DEC 2005)

All property acquired for, and reimbursed by, NASA or transferred by NASA for use under this NASA-Interagency Purchase Request shall be controlled and accounted for in accordance with the servicing agency's normal procedures. All excess items, however, costing $500 or more and in condition Code 7 or better (GSA Condition Codes) shall be reported to the NASA originating office for possible reutilization before disposition.

(End of clause)

[FR Doc. 05–23993 Filed 12–14–05; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1852

RIN 2700–AD03

NASA Research Announcements—Small Business Subcontracting Plans and Publication Acknowledgement and Disclaimers

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement (NFS) to require for NASA Research Announcements: Submission of a small business subcontracting plan with any proposal having subcontracting possibilities that may result in the award of a contract whose value exceeds $5,000,000; and acknowledgement of NASA sponsorship and disclaimer of agency endorsement of results.

DATES: *Effective Date:* December 15, 2005.

FOR FURTHER INFORMATION CONTACT: Patrick Flynn, NASA Headquarters, Office of Procurement, Contract Management Division, (202) 358–0460, e-mail: *patrick.flynn@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

On September 27, 2004, NASA published a proposed rule (69 FR 57664–57665) to solicit comments on its proposal to amend subcontracting plan and acknowledgement and disclaimer requirements for NASA Research Announcements (NRAs) and resulting contracts. During the 60-day public-comment period, NASA received one response to the proposed rule. The Aerospace Industries Association (AIA) expressed concern that the proposed rule would make preparation and response to NRAs more costly and more cumbersome to prepare, by requiring submission of a small business subcontracting plan before evaluation rather than after selection, as is currently the rule. AIA's comment and our analysis follow. No comments were received with respect to the second part of the proposal, adding acknowledgement of NASA sponsorship

and disclaimer of agency endorsement of results to standard reporting requirements.

B. Analysis

Clarification of the scope of the proposed change to the existing subcontracting plan submission requirement will show the magnitude of burden about which AIA expressed concern. The proposed rule amends the NASA FAR Supplement (NFS) requirement for submission of a small business subcontracting plan along with initial submission of any proposal having subcontracting possibilities that may result in the award of a contract whose value exceeds $500,000 under NASA Research Announcements (NRAs), a type of broad agency announcement. The NFS already requires submission of such a plan, but only after selection is made by the agency for contract award under these competitive procedures. Consequently, the proposed rule does not affect ultimate costs or difficulty for NRA proposal preparation by successful offerors, but only by unsuccessful offerors.

The commenter's specific objection is that requiring a subcontract plan and asking potential contractors to commit to that plan is unreasonable for this type of acquisition because opportunities are often minimal. We disagree for two reasons. First, the statutory requirement on which the NFS requirement is based, Section 8(d) of the Small Business Act (15 U.S.C. 637(d)), makes no exception for research. Second, it is not unreasonable to expect that NASA will benefit from increased small business participation in contracted research, and that it should be encouraged. We are not alone in holding this position. Recently, in its National Innovation Initiative Report (December 2004), the Council on Competitiveness asserted a new trend of interdependence of small and large firms, saying on page 18, ''This interdependence is particularly relevant in the context of the innovation enterprise. Big and small companies have increasingly complementary roles in technology development.''

However, recognizing that the magnitude of research projects has a direct bearing on subcontracting opportunities, and considering the burden placed on offerors under smaller project announcements, we have found merit in AIA's recommended alternate proposal that subcontract plans before selection be required only above $5,000,000, rather than $500,000, as we originally proposed. (Plans will still be required after selection and before contract award above $500,000.)

C. Impact

Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities since the rule: (1) Only affects the timing of the submission of small business subcontracting plans by large business offerors; and (2) adds a requirement for a short legend to be affixed to publications of material based on NASA-sponsored projects. Small businesses do not submit subcontracting plans, and any costs associated with the legend are economically insignificant. No comments were received from small entities in response to the proposed rule.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1852

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR Part 1852 is amended as follows:

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR Part 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

■ 2. Amend section 1852.235–72 by revising the date of the clause and paragraph (a)(4) to read as follows:

1852.235–72 Instructions for Responding to NASA Research Announcements.

* * * * *

Instructions for Responding to NASA Research Announcements (Dec 2005)

(a) * * *

(4) A contract, grant, cooperative agreement, or other agreement may be used to accomplish an effort funded in response to an NRA. NASA will determine the appropriate award instrument. Contracts resulting from NRAs are subject to the Federal Acquisition Regulation and the NASA FAR Supplement. Any proposal from a large business concern that may result in the award of a contract, which exceeds $5,000,000 and has subcontracting possibilities should include a small business subcontracting plan in accordance with the clause at FAR 52.219–9, Small Business Subcontracting Plan. (Subcontract plans for contract awards below $5,000,000, will be negotiated after selection.) Any resultant grants or cooperative agreements will be awarded and administered in accordance with the NASA Grant and Cooperative Agreement Handbook (NPR 5800.1).

* * * * *

■ A. Amend section 1852.235–73 by revising the date of the clause to read (Dec 2005) and, in the first sentence of paragraph (b) removing the reference ''NPR 2200.2A'' and adding ''NPR 2200.2'' in its place.

■ B. Amend section 1852.235–73, Alternate II, by revising the date of the clause and adding a new paragraph (f) to read as follows:

1852.235–73 Final Scientific and Technical Reports.

* * * * *

Alternate II (Dec 2005)

* * * * *

(f) All publications of any material based on or developed under NASA sponsored projects shall include an acknowledgement similar to the following:

''The material is based upon work supported by the National Aeronautics and Space Administration under Contract Number XXXX.''

Except for articles or papers published in scientific, technical or professional journals, the exposition of results from NASA supported research shall also include the following disclaimer:

''Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the National Aeronautics and Space Administration.''

[FR Doc. 05–23994 Filed 12–14–05; 8:45 am]

BILLING CODE 7510–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 120905A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processor Vessels Using Hook-and-line Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 total allowable catch (TAC) of Pacific cod specified for catcher/processor vessels using hook-and-line gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 12, 2005, until 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 Pacific cod TAC allocated to catcher/processor vessels using hook-and-line gear in the BSAI is 99,519 metric tons as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005), the reallocation on October 5, 2005 (70 FR 58983, October 11, 2005) and the reallocation on November 21, 2005 (70 FR 71039, November 25, 2005). See § 679.20(c)(3)(iii) and (c)(5), and (a)(7)(i)(C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2005 Pacific cod TAC allocated to catcher/processor vessels using hook-and-line gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using hook-and-line gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher/processor vessels using hook-and-line gear in the BSAI.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: December 9, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–24078 Filed 12–12–05; 1:45 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 120805C]

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Halibut and Sablefish Individual Fishing Quota Cost Recovery Program

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

ACTION: Notification of standard prices for the North Pacific halibut and sablefish Individual Fishing Quota (IFQ) cost recovery program.

SUMMARY: The National Marine Fisheries Service publishes IFQ standard prices for the IFQ Cost Recovery Program in the halibut and sablefish fisheries of the North Pacific. This action is intended to provide holders of halibut and sablefish IFQ permits information to calculate the payments required for IFQ cost recovery fees due by January 31, 2006.

DATES: Effective December 15, 2005.

FOR FURTHER INFORMATION CONTACT: Troie Zuniga, Fee Coordinator, 907–586–7231.

SUPPLEMENTARY INFORMATION:

Background

NMFS, Alaska Region, administers the halibut and sablefish IFQ programs in the North Pacific. The IFQ Programs are limited access systems authorized by section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982. Fishing under the IFQ Programs began in March 1995. Regulations implementing the IFQ Program are set forth at 50 CFR part 679.

In 1996, the Magnuson-Stevens Act was amended by Public Law 104–297 to, among other things, require the Secretary of Commerce to ''collect a fee to recover the actual costs directly related to the management and enforcement of any . . . individual fishing quota program'' (section 304(d)(2)(A)). Section 304(d)(2) of the Magnuson-Stevens Act specifies an upper limit on these fees, when the fees must be collected, and where the fees must be deposited. Section 303(d)(4) of the Magnuson-Stevens Act allows NMFS to reserve up to 25 percent of the fees collected for use in an IFQ loan program to aid in financing the purchase of IFQ or quota share (QS) by entry-level and small-vessel fishermen.

On March 20, 2000, NMFS published regulations implementing the IFQ Cost Recovery Program (65 FR 14919), which are set forth at 50 CFR 679.45. Under the regulations, an IFQ permit holder incurs a cost recovery fee liability for every pound of IFQ halibut and IFQ sablefish that is landed on his or her IFQ permit(s). The IFQ permit holder is responsible for self-collecting the fee liability for all IFQ halibut and IFQ sablefish landings on his or her permit(s). The IFQ permit holder is also responsible for submitting a fee liability payment to NMFS on or before the due date of January 31 following the year in which the IFQ landings were made. The

dollar amount of the fee due is determined by multiplying the annual IFQ fee percentage (3 percent or less) by the ex-vessel value of each IFQ landing made on a permit and summing the totals of each permit (if more than one).

Standard Prices

The fee liability is based on the sum of all payments of monetary worth made to fishermen for the sale of the fish during the year. This includes any retro-payments (e.g., bonuses, delayed partial payments, post-season payments) made to the IFQ permit holder for previously landed IFQ halibut or sablefish.

For purposes of calculating IFQ cost recovery fees, NMFS distinguishes between two types of ex-vessel value: ''actual ex-vessel value'' and ''standard ex-vessel value.'' ''Actual ex-vessel value'' is the amount of all compensation, monetary or non-monetary, that an IFQ permit holder received as payment for his or her IFQ fish sold. ''Standard ex-vessel value'' is the default value on which to base fee liability calculations. However, IFQ permit holders have the option of using ''actual ex-vessel value'' if they can satisfactorily document those values.

Regulations at § 679.45(c)(2)(i) require the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. These standard prices are used, along with estimates of IFQ halibut and IFQ sablefish landings, to calculate standard values. The standard prices are described in U.S. dollars per IFQ equivalent pound, for IFQ halibut and IFQ sablefish landings made during the year. IFQ equivalent pound(s) means the weight amount, recorded in pounds, for an IFQ landing and calculated as round weight for sablefish and headed and gutted (''net'') weight for halibut. NMFS calculates the standard prices to reflect, as closely as possible, by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings. The standard prices for IFQ halibut and IFQ sablefish are listed in the following table. Data from ports are combined as necessary to protect confidentiality of data submissions.

BILLING CODE 3510–22–S

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2005 IFQ SEASON

LANDING LOCATION	PERIOD ENDING	*HALIBUT* STANDARD EX -VESSEL PRICE	*SABLEFISH* STANDARD EX-VESSEL PRICE
CORDOVA	March 31	-	-
	April 30	-	-
	May 31	$2.88	$1.97
	June 30	-	-
	July 31	-	-
	August 31	-	-
	September 30	$3.08	-
	October 31	$3.08	-
	November 30	$3.08	-
DUTCH HARBOR	March 31	-	-
	April 30	-	-
	May 31	-	-
	June 30	$2.82	-
	July 31	$2.87	-
	August 31	$2.89	-
	September 30	$2.95	-
	October 31	$2.95	-
	November 30	$2.95	-
HOMER	March 31	-	-
	April 30	$3.01	-
	May 31	-	-
	June 30	$3.04	-
	July 31	$3.02	-
	August 31	$3.07	-
	September 30	$3.19	-
	October 31	$3.19	-
	November 30	$3.19	-

LANDING LOCATION	PERIOD ENDING	*HALIBUT* STANDARD EX -VESSEL PRICE	*SABLEFISH* STANDARD EX-VESSEL PRICE
KETCHIKAN	March 31	-	-
	April 30	-	-
	May 31	-	-
	June 30	$2.96	-
	July 31	-	-
	August 31	$3.04	-
	September 30	-	-
	October 31	-	-
	November 30	-	-
KODIAK	March 31	$3.13	$1.84
	April 30	$2.82	$1.86
	May 31	$2.81	$2.00
	June 30	$3.75	$2.07
	July 31	$2.87	$1.88
	August 31	$2.90	$2.22
	September 30	$2.96	$2.32
	October 31	$2.96	$2.32
	November 30	$2.96	$2.32
PETERSBURG	March 31	-	-
	April 30	-	-
	May 31	$2.90	-
	June 30	-	-
	July 31	$3.11	-
	August 31	$3.02	-
	September 30	$3.06	-
	October 31	$3.06	-
	November 30	$3.06	-

LANDING LOCATION	PERIOD ENDING	***HALIBUT*** STANDARD EX -VESSEL PRICE	***SABLEFISH*** STANDARD EX-VESSEL PRICE
SEWARD	March 31	$3.26	-
	April 30	$2.95	$2.00
	May 31	-	-
	June 30	-	-
	July 31	-	-
	August 31	-	-
	September 30	-	-
	October 31	-	-
	November 30	-	-
SITKA	March 31	$3.33	-
	April 30	$3.03	-
	May 31	$2.95	-
	June 30	-	-
	July 31	-	-
	August 31	-	-
	September 30	-	-
	October 31	-	-
	November 30	-	-
YAKUTAT	March 31	-	-
	April 30	-	-
	May 31	-	-
	June 30	-	-
	July 31	-	-
	August 31	-	-
	September 30	-	-
	October 31	-	-
	November 30	-	-

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY PORT GROUP FOR 2005 IFQ SEASON

PORT GROUP	PERIOD ENDING	*HALIBUT* STANDARD EX -VESSEL PRICE	*SABLEFISH* STANDARD EX-VESSEL PRICE
BERING SEA[1]	March 31	-	-
	April 30	-	-
	May 31	$2.83	$1.82
	June 30	$2.87	$2.09
	July 31	$2.91	$2.07
	August 31	$2.91	$2.22
	September 30	$2.95	$2.10
	October 31	$2.95	$2.10
	November 30	$2.95	$2.10
CENTRAL GULF[2]	March 31	$3.25	$1.98
	April 30	$2.91	$1.97
	May 31	$2.88	$2.01
	June 30	$3.14	$2.17
	July 31	$2.98	$2.15
	August 31	$3.29	$2.50
	September 30	$3.03	$2.40
	October 31	$3.03	$2.40
	November 30	$3.03	$2.40
SOUTHEAST[3]	March 31	$3.27	$2.10
	April 30	$3.52	$1.99
	May 31	$2.81	$2.10
	June 30	$3.03	$2.21
	July 31	$3.10	$2.32
	August 31	$3.14	$2.39
	September 30	$3.11	$2.39
	October 31	$3.11	$2.39
	November 30	$3.11	$2.39

PORT GROUP	PERIOD ENDING	***HALIBUT*** STANDARD EX -VESSEL PRICE	***SABLEFISH*** STANDARD EX-VESSEL PRICE
ALL[4]	March 31	$3.25	$1.99
	April 30	$3.15	$1.96
	May 31	$2.85	$2.01
	June 30	$3.05	$2.17
	July 31	$2.99	$2.18
	August 31	$3.13	$2.41
	September 30	$3.03	$2.36
	October 31	$3.03	$2.36
	November 30	$3.03	$2.36

1. Landing locations Within Port Group - Bering Sea: Adak, Akutan, Akutan Bay, Atka, Bristol Bay, Chefornak, Dillingham, Captains Bay, Dutch Harbor, Egegik, Ikatan Bay, Hooper Bay, King Cove, King Salmon, Kipnuk, Mekoryuk, Naknek, Nome, Quinhagak, Savoonga, St. George, St. Lawrence, St. Paul, Togiak, Toksook Bay, Tununak, Beaver Inlet, Ugadaga Bay, Unalaska.

2. Landing Locations Within Port Group - Central Gulf of Alaska: Anchor Point, Anchorage, Alitak, Chignik, Cordova, Eagle River, False Pass, West Anchor Cove, Girdwood, Chinitna Bay, Halibut Cove, Homer, Kasilof, Kenai, Kenai River, Alitak, Kodiak, Port Bailey, Nikiski, Ninilchik, Old Harbor, Palmer, Sand Point, Seldovia, Resurrection Bay, Seward, Valdez, Whittier.

3. Landing Locations Within Port Group - Southeast Alaska: Angoon, Baranof Warm Springs, Craig, Edna Bay, Elfin Cove, Excursion Inlet, Gustavus, Haines, Hollis, Hoonah, Hyder, Auke Bay, Douglas, Tee Harbor, Juneau, Kake, Ketchikan, Klawock, Metlakatla, Pelican, Petersburg, Portage Bay, Port Alexander, Port Graham, Port Protection, Point Baker, Sitka, Skagway, Tenakee Springs, Thorne Bay, Wrangell, Yakutat.

4. Landing Locations Within Port Group - All: **For Alaska:** All landing locations included in 1, 2, and 3. **For California:** Eureka, Fort Bragg, Other California. **For Oregon:** Astoria, Aurora, Lincoln City, Newport, Warrenton, Other Oregon. **For Washington:** Anacortes, Bellevue, Bellingham, Nagai Island, Edmonds, Everett, Granite Falls, Ilwaco, La Conner, Port Angeles, Port Orchard, Port Townsend, Ranier, Fox Island, Mercer Island, Seattle, Standwood, Other Washington. **For Canada:** Port Hardy, Port Edward, Prince Rupert, Vancouver, Haines Junction, Other Canada.

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

Dated: December 12, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–24082 Filed 12–14–05; 8:45 am]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 70, No. 240
Thursday, December 15, 2005

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319, 330, and 340

[Docket No. 03–002–1]

Importation of Nursery Stock

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations on importing nursery stock to eliminate various restrictions on the importation of plants *in vitro* and kenaf seed; to establish programs for the importation of approved plants from the Canary Islands and from Israel; to require an additional declaration on the phytosanitary certificate accompanying blueberry plants imported from Canada; to require that phytosanitary certificates include the genus and species names of the restricted articles they accompany; to change the phytosanitary certificate requirements for several restricted articles; to reduce the postentry quarantine growing period for *Hydrangea spp.* and for certain chrysanthemums; and to update the list of ports of entry and Federal plant inspection stations. We are also proposing several other changes to update and clarify the regulations and improve their effectiveness. These changes are necessary to relieve restrictions that appear unnecessary, update existing provisions, and make the regulations easier to understand and implement.

DATES: We will consider all comments that we receive on or before February 13, 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–2005–0081 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. 03–002–1, 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. 03–002–1.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. Arnold T. Tschanz, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–5306.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. The regulations contained in ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products,'' §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

We are proposing to make several amendments to the regulations. Our proposed amendments are discussed below by topic.

Definition of From

The definition of *from* in § 319.37–1 provides that an article is considered to be ''from'' any country or locality in which it was grown. (If an article has been grown in two or more countries or localities, APHIS inspectors consider that article to be ''from'' the country or locality from which the importation of that article poses the greatest pest risk when determining what, if any, restrictions apply to the importation of that article.) The current regulations also provide that an article imported into Canada from another country or locality shall be considered as being solely ''from'' Canada if it is imported into the United States directly from Canada after having been grown for at least 1 year in Canada; has never been grown in a country from which it would be a prohibited article or from which it would be subject to special foreign inspection, certification, treatment, or other requirements; was not grown in a country or locality from which it would be subject to postentry quarantine requirements, unless it was grown in Canada under postentry growing conditions equivalent to those specified for the article in § 319.37–7; and was not imported into Canada in growing media.

We have previously limited this exception to Canada because we believed that the pest risks associated with the importation of plants from Canada were better known to us than those associated with plants imported from other areas. However, articles from any area may be considered to be ''from'' that area if they were previously imported into the exporting area under conditions that are equivalent to those that we would require if the articles had been imported into the United States. From a phytosanitary perspective, if the articles met the conditions for importation into the United States when they were imported into the country from which they are subsequently exported, there is no reason to impose any conditions on their importation other than any that may apply to those articles exported from the exporting country. For the same reasons, the current definition of *from* may place an unnecessary burden on Canadian importers who wish to export imported plants to the United States; under the current definition, plants may only be considered to be ''from'' Canada if they have been grown there for a year,

regardless of the duration for which regulations in § 319.37–7 require the plants to be grown in postentry quarantine.

Additionally, under Article 2 of the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement), the Animal and Plant Health Inspection Service (APHIS) must not discriminate between countries where identical or similar conditions prevail when regulating the importation of plants and plant products. The definition of *from* provides an exception for restricted articles that originated in another country or locality but have been grown in accordance with postentry growing conditions equivalent to those specified for the articles in Canada, but it does not offer that exception for regulated articles exported from any other country.

Therefore, we are proposing to amend the definition of *from* by providing that a plant would be considered from an exporting country or area when it was grown or propagated only in the exporting country or area, or when it was grown in the exporting country or area after it entered the exporting country or area from another country or area under conditions that are equivalent to those that would be required by the United States if the plant were imported into the United States directly from any of the countries or areas where the plant was grown prior to its entry into the exporting country or area. This change would provide exporters and importers with greater flexibility while continuing to prevent the introduction of plant pests into the United States.

Definition of Inspector

The current definition of *inspector* in § 319.37–1 reads: ''Any employee of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of the regulations in this subpart.'' This definition does not reflect the reassignment of certain responsibilities from APHIS to the Department of Homeland Security's Bureau of Customs and Border Protection by the Homeland Security Act of 2002. Therefore, we are proposing to replace the current definition of *inspector* with a new definition that would read as follows: ''Any individual authorized by the Administrator of APHIS or the Commissioner of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this part.''

Definition of Preclearance

Under the current regulations in § 319.37–4(b), any restricted article may be sampled and inspected by an inspector under preclearance inspection arrangements in the country in which the article was grown and must undergo any treatment contained in 7 CFR part 305 that is ordered by the inspector. However, the current regulations in § 319.37–1 do not include a definition of *preclearance,* which makes the conditions under which sampling and inspection can take place in the country of origin somewhat ambiguous.

Therefore, we are proposing to add a definition of *preclearance* to § 319.37–1. The definition we are proposing to add is consistent with the definition of that term in the International Plant Protection Convention's (IPPC) 2002 Glossary of Phytosanitary Terms (International Standards for Phytosanitary Measures [ISPM] publication number 5).[1] It would read: ''Phytosanitary certification and/or clearance in the country in which the articles were grown, performed by or under the regular supervision of APHIS.'' This change would clarify the existing regulations.

Plant Protection Act Definitions

In a final rule published in the **Federal Register** on August 14, 2000 (65 FR 49471–49472, Docket No. 00–063–1), the Secretary of Agriculture delegated to the Animal and Plant Health Inspection Service (APHIS) the authority to carry out title IV of the Agricultural Risk Protection Act of 2000, known as the Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701 *et seq.*). In that final rule, we also stated our intent to make any other changes deemed necessary as a result of the enactment of that law. We are proposing here to amend several definitions and add several other definitions in § 319.37–1 to make the definitions in the regulations consistent with those in the Plant Protection Act.

The proposed changes to the definitions are described below:

- The current definition of *person,* which reads ''An individual, corporation, company, society, or association,'' would be revised to read: ''Any individual, partnership, corporation, association, joint venture, or other legal entity.''
- A new definition of *plant* would be added to read: ''Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.''
- The current definition of *plant pest,* which reads ''The egg, pupal, and larval stages as well as any other living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants,'' would be revised to read: ''Any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of these articles.''
- A new definition of the term *State* would be added to read: ''Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.''
- Accordingly, the current definition of the term *United States,* which contains language similar to that in the proposed definition of *State,* would be revised to read, simply, ''All of the States.''

In § 319.37–7, paragraph (g) contains a definition of *State* that applies to that section. This definition is substantively identical to the definition proposed above, which would apply to §§ 319.37–1 through 319.37–14. Accordingly, we are also proposing to remove § 319.37–7(g).

Definitions of Restricted Article and Regulated Plant

The Plant Protection Act definition of *plant* that we are proposing to add to the nursery stock regulations would include plants that are not regulated by the nursery stock regulations, such as nonvascular plants and noxious weeds. Accordingly, we would also add a new definition of *regulated plant* to list the plants regulated in the nursery stock regulations. We are also proposing to amend the definition of *restricted article* to refer to the proposed definition of

[1] ISPMs may be viewed on the World Wide Web at *https://www.ippc.int/IPP/En/default.jsp.* Click on the ''Standards'' link on the home page to view the ISPMs.

regulated plant and to correct editorial errors in the definition.

The proposed definition of *regulated plant* would read: ''Any gymnosperm, angiosperm, fern, or fern ally. Gymnosperms include cycads, conifers, and gingko. Angiosperms include any flowering plant. Fern allies include club moss, horsetail, whisk fern, spike moss, and quillwort.'' This definition encompasses all the plants regulated by the nursery stock regulations.

(Note: We published an advance notice of proposed rulemaking for revising the nursery stock regulations on December 10, 2004. At a public meeting on May 25, 2005, that solicited comments regarding certain issues discussed in the advance notice of proposed rulemaking, we specifically solicited comments on whether we should expand the range of plants APHIS currently regulates in the nursery stock regulations to include non-vascular plants, such as green algae. We are continuing to consider the responses we received regarding this issue, but since we have not yet decided whether to regulate non-vascular plants, we are proposing a definition of *regulated plant* that includes only the plants APHIS currently regulates under the nursery stock regulations. If we eventually determine that it is necessary to regulate non-vascular plants, we will update the definition of *regulated plant* in a future rulemaking.)

The definition of *restricted article* currently reads ''Any class of nursery stock or other class of plant, root, bulb, seed, or other plant product, for or capable of propagation, excluding any prohibited articles listed in § 319.37–2 (a) or (b) of this subpart, excluding any articles subject to any restricted entry orders in 7 CFR part 321 (*i.e.*, potatoes), and excluding any articles regulated in 7 CFR 319.8 through 319.24 or 319.41 through 319.74–7.'' We are proposing to amend this definition so that it specifically includes only regulated plants, as defined above. In addition, the reference to § 319.74–7 in the current definition would be changed to § 319.74–4, because the sections that had followed § 319.74–4 were removed in a final rule effective and published in the **Federal Register** on September 25, 1997 (62 FR 50229–50231, Docket No. 95–082–2). We would also delete the reference to 7 CFR part 321, as the restrictions on the importation of potatoes that had been located in 7 CFR part 321 were moved into the nursery stock regulations in a final rule published in the **Federal Register** on September 25, 1997 (62 FR 50237–50239, Docket No. 97–010–2) and effective on October 27, 1997. We would change the citation ''319.24'' to read ''319.24–5,'' to indicate that all the sections in the corn diseases subpart are included in that range. Finally, we would indicate that articles regulated by the noxious weeds regulations in 7 CFR part 360 are excluded from the definition, since they are regulated separately from nursery stock.

Thus, the proposed definition of *restricted article* would read: ''Any class of nursery stock or other regulated plant, root, bulb, seed, or other plant product, for or capable of propagation, excluding any prohibited articles listed in § 319.37–2(a) or (b) of this subpart, and excluding any articles regulated in §§ 319.8 through 319.24–5 or 319.41 through 319.74–4 and any articles regulated under part 360 of this chapter.'' These changes would update the regulations and make them more consistent.

Rubus spp. From Europe

We are proposing to add articles of *Rubus* spp. from Europe not meeting the conditions for importation in § 319.37–5(f) to the list of prohibited articles found in the table in § 319.37–2(a). In § 319.37–5, paragraph (f) requires that *Rubus* spp. from Europe must be accompanied at the port of first arrival in the United States by a phytosanitary certificate containing an additional declaration that the articles have been found by the plant protection service of the country of origin to be free of *Rubus* stunt agent, based on visual examination and indexing of the parent stock. *Rubus* stunt agent affects the yield, vitality, and quality of plants of the genus *Rubus,* which include raspberry and blackberry. Although it is primarily transmitted along insect vectors, the disease can be transmitted through propagative material.

If articles of *Rubus* spp. from Europe are not accompanied by a phytosanitary certificate with the above additional declaration at the port of first arrival in the United States, they should be denied entry to prevent the possible introduction of this disease. However, nothing in the regulations as they now stand specifically prohibits the importation of *Rubus* spp. from Europe that are not accompanied by the phytosanitary certificate required in § 319.37–5(f). To correct this oversight, we are proposing to add articles of *Rubus* spp. from Europe that do not meet the conditions for importation in § 319.37–5(f) of the regulations to the list of prohibited articles. Prohibiting imports of *Rubus* spp. from Europe that are not accompanied by a phytosanitary certificate with the proper additional declaration would help to ensure that Rubus stunt agent is not introduced into the United States.

Plants In Vitro

We are proposing to remove several restrictions on plants *in vitro.* The IPPC's 2002 Glossary of Phytosanitary Terms defines plants *in vitro* as ''plants in an aseptic medium in a closed container.'' Such plants are minimally exposed to plant diseases and pests that may exist in the area surrounding its nursery of origin. Plants *in vitro* have been found to pose an extremely low risk of introducing plant pests into the United States. We believe, therefore, that several restrictions currently in place on the importation of plants *in vitro* are now unnecessary. Thus:

- We are proposing to amend § 319.37–3(a)(5) of the regulations to exempt shipments of plants *in vitro* from the requirement that lots of 13 or more articles offered for importation into the United States must be accompanied by a written permit issued by a Plant Protection and Quarantine (PPQ) inspector. This exemption would not apply if importation of the plants is restricted or prohibited elsewhere in the nursery stock regulations.
- Because we are proposing to exempt shipments of plants *in vitro* from the permit requirement, the changes we are proposing to make to the current list of ports of entry in § 319.37–14, discussed below under the heading ''Federal Plant Inspection Stations and Other Ports of Entry,'' would mean that plants *in vitro* could enter the United States at any port of entry authorized in 7 CFR part 330 for articles not required to be imported under a written permit.
- We are also proposing to amend § 319.37–4(a) of the regulations to exempt plants *in vitro* from the requirement that restricted articles offered for importation into the United States be accompanied by a phytosanitary certificate from the country of origin, unless their importation is restricted or prohibited elsewhere in the nursery stock regulations. These changes would make plants *in vitro* whose importation is not otherwise restricted or prohibited generally admissible into the United States.

To accomplish these changes, we would add a definition of plants *in vitro* to the regulations in § 319.37–1. The definition would be identical to the IPPC definition quoted above. We would also remove the reference in paragraph (a)(5) of § 319.37–3 to ''sterile cultures of orchid plants,'' as these qualify as plants *in vitro*, and we would correct the paragraph to indicate that seeds and bulbs whose importation is otherwise prohibited or restricted by the

regulations are not exempt from the permit requirement.

In a related matter, we are also proposing to amend § 319.37–8(c) of the regulations, which states: ''A restricted article growing solely in agar or in other transparent or translucent tissue culture medium may be imported established in such growing media.'' We are proposing to remove the requirement that the growing medium be transparent or translucent in order to allow the use of charcoal in the growing medium. Charcoal is commonly used by importers of plants *in vitro* as a detoxifying agent; if it is used as an additive in growing media, it will still be easy to determine whether the growing media meets the aseptic standard prescribed in the definition of plants *in vitro*, because any bacteria in the growing media would quickly reproduce and form a large mass. Therefore, we would revise this paragraph to simply read: ''Plants *in vitro* may be imported in their growing media.''

Removing these restrictions would make plants *in vitro* generally admissible without restrictions, providing U.S. importers of plants *in vitro* with greater flexibility without increasing the risk of plant pest introduction into the United States.

Genus and Species Name on Phytosanitary Certificates

The regulations in § 319.37–4(a) currently require that any restricted article offered for importation into the United States be accompanied by a phytosanitary certificate of inspection, with certain exceptions. We are proposing to additionally require that the phytosanitary certificate include the genus and species name of the restricted article that it accompanies.

The IPPC's Guidelines for Phytosanitary Certificates (ISPM publication number 12) state that phytosanitary certificates ''should identify plants and plant products using accepted scientific names, at least to genus level but preferably to species level.'' Having the genus and species name available would allow inspectors to easily identify restricted articles presented for importation and thus better assess any risks that may be associated with their importation. It could also result in savings for importers, as eliminating the need for inspectors to make a species identification of restricted articles offered for importation could allow their shipments to be processed more quickly and rejected less frequently.

For example, the regulations in § 319.37–5(b) allow the importation of *Prunus* spp. that are immune to plum pox virus under different conditions than the importation of species that are not immune to the virus. When an article of *Prunus* spp. is inspected at the port of entry, it can be difficult to determine whether the article is from a species that is resistant to plum pox. As a result, inspectors often must spend significant amounts of time making that determination, which can cause a delay in releasing the article. If the inspector cannot make such a determination, the shipment of *Prunus* spp. must be rejected. Requiring that both the genus and species name be listed on the phytosanitary certificate offered for importation would eliminate both the burden that making a species determination imposes on inspectors and the costs that delayed or rejected shipments impose on importers.

In addition, requiring that phytosanitary certificates include the genus and species names of the restricted articles that they are accompanying would allow APHIS to collect data from phytosanitary certificates about the number, size, and volume of imports of nursery stock into the United States. Currently, we lack such data, which can make it difficult to accurately assess the potential impact of any changes we may consider making to the nursery stock regulations. Collecting genus and species data from phytosanitary certificates could enable us to promulgate regulations that take into account the current importation of nursery stock more completely.

Phytosanitary Certificates for Bulbs From the Netherlands

We are also proposing to amend paragraph § 319.37–4(a) of the regulations to allow small individual shipments of bulbs from the Netherlands to enter with a special certificate related to a phytosanitary certificate. The special certificate would list a serial number that would refer to a phytosanitary certificate held by the national plant protection organization of the Netherlands. The special certificate would also list the scientific name of the bulb, the bulbs' country of origin, and an expiration date after which the special certificate could no longer be used in lieu of a phytosanitary certificate. The expiration date would be 4 weeks after the issuance of the phytosanitary certificate held by the national plant protection organization of the Netherlands.

Commercial shipments of bulbs from the Netherlands must be precleared for entry into the United States by a PPQ inspector. In addition, under § 319.37–5(a), all bulbs imported from the Netherlands must be accompanied by a phytosanitary certificate with an additional declaration that the bulbs offered for importation were grown on land that has been sampled and microscopically inspected by the plant protection organization of the Netherlands and found to be free from the potato cyst nematodes *Globodera rostochiensis* (Woll.) Behrens and *G. pallida* (Stone) Behrens within the past 12 months.

The proposed special certificate would accompany small individual shipments of bulbs. Typically, these shipments are brought to the United States from the Netherlands by individuals carrying the bulbs in their luggage. These shipments are not precleared by APHIS, but must be cleared at the port of entry; the preclearance process and the clearance process at the port of entry involve the same steps and provide equivalent phytosanitary security. Currently, bulbs that come to the United States in that manner must be accompanied by a phytosanitary certificate with the additional declaration described above; if they do not have the phytosanitary certificate, they are confiscated upon arrival in the United States.

The special certificate we are proposing would be easier for individuals to obtain than a full phytosanitary certificate while providing the same assurance that the bulbs are free of golden nematode and potato cyst nematode. The clearance process at the port of entry would continue to serve as an additional mitigation against the risk of introduction of nematodes into the United States. Using this certificate, individuals would be able to import small shipments of bulbs from the Netherlands into the United States more easily without compromising phytosanitary safeguards.

Importation of Certain Seeds From Canada

We are proposing to add a new paragraph (d) to § 319.37–4 of the regulations to allow seed exported from Canada that meets certain conditions to be imported into the United States without a phytosanitary certificate.

To be eligible for this exemption, Canadian exporters of seed would have to register with and participate in a seed export program that would be established by the Canadian Food Inspection Agency (CFIA). CFIA would assign each exporter that registers with the program an establishment identification number. CFIA would provide a list of establishment identification numbers, along with the

names, locations, and telephone numbers of the establishments to which the identification numbers correspond, to APHIS before the start of the seed shipping season and regularly throughout the shipping season.

Participants in the seed export program would be required by CFIA to demonstrate that shipments of seed can be traced back to their original seed lots and seed testing records; demonstrate that seed that does not meet U.S. standards is consistently separated from seed that does; implement quality assurance systems at the production facility, with a descriptive manual available for review by CFIA; submit to annual audits of the quality assurance system; and implement any other necessary safeguards.

Certain documents would be required in lieu of a phytosanitary certificate for Canadian exporters participating in CFIA's seed export program.

- Each shipment of seed exported under this program would be accompanied by an export certification document. The information in this document would be provided by the seed exporter. This document would show, among other information, the scientific name of the seed, the common name of the seed, the country of origin, and the establishment identification number. The document would also contain all information required by 7 CFR part 361, ''Importation of Seed and Screenings Under the Federal Seed Act,'' including the lot number of the seed.
- Shipments of agricultural or vegetable seeds, as listed in the Federal Seed Act regulations in 7 CFR part 361, would be accompanied by a document agreed upon by CFIA and APHIS and provided by CFIA that would certify that the relevant requirements of the Federal Seed Act regulations had been met.
- Shipments of other seeds (i.e., seeds that are not agricultural or vegetable seeds) that are exported from Canada to the United States would be accompanied by a document agreed upon by CFIA and APHIS and provided by CFIA that would certify that the seed had been inspected for plant pests.

Currently, exporters of Canadian seed must provide a phytosanitary certificate as required under the regulations in § 319.37–4 and a different set of documents as required in 7 CFR part 361. The information requirements of the two parts overlap to some extent, which results in duplicative paperwork for exporters of Canadian seed. Because of this, Canada requested that we establish this seed importation program to streamline our requirements; we reviewed the risks associated with establishing such a program and found that they were similar to the risks associated with current importations if the program operated under the controls described above. Establishing this program would eliminate duplicative paperwork requirements while continuing to ensure that seeds imported from Canada do not introduce plant pests or noxious weeds into the United States.

We are also proposing to remove all references to the ''Plant Protection Division of Agriculture Canada'' in § 319.37–4 and replace them with references to the Canadian Food Inspection Agency to update the regulations.

At this time, we are not proposing to establish similar seed importation programs for seeds from countries other than Canada. If another country were to request that APHIS establish an importation program for seed from that country and provided data indicating that importing seed from that country under such a program would pose a risk equivalent to that associated with current importations of seed from that country, we would consider establishing such a program.

Blueberry Plants From Canada

We are proposing to add a new paragraph § 319.37–5(t) to the regulations to require that phytosanitary certificates that accompany *Vaccinium corymbosum* (blueberry) plants that are imported from Canada must contain an additional declaration stating that the plants are free of blueberry scorch carlavirus.

Blueberry scorch carlavirus causes blueberry scorch disease, the primary symptom of which is blighting of both flowers and new vegetative growth at peak bloom. Blighted blossoms fail to produce fruit, and infected plants in general are less vigorous than healthy plants. Bushes, once infected, may show symptoms each year. Initially, only one or few branches may have blighted flowers and leaves, but after a few years the entire bush may show symptoms.

We are proposing to require this additional declaration on the phytosanitary certificate accompanying *V. corymbosum* plants because virulent strains of blueberry scorch carlavirus have been found that only exist in Canada. This requirement would ensure that *V. corymbosum* plants imported from Canada are free of this dangerous virus while continuing to allow importation of plants that have been determined to be free of this virus.

For the reasons described above in the discussion of prohibiting the entry of articles of *Rubus* spp. from Europe that lack the appropriate phytosanitary certificate, we are also proposing to add *V. corymbosum* plants from Canada that do not meet the requirements of proposed § 319.37–5(t) to the list of prohibited articles in § 319.37–2(a).

Programs for Importation of Approved Plants From the Canary Islands and From Israel

We are proposing to add new paragraphs (u) and (v) to § 319.37–5 to establish programs to govern the importation of approved plants from the Canary Islands of Spain and from Israel, respectively. These programs would require that growers employ several safeguards to ensure that pests present in the exporting countries are excluded from shipments of approved plants. In the case of the Canary Islands, the approved plants would be *Pelargonium* (geranium) spp., and the pests of concern are *Helicoverpa armigera*, the cotton bollworm; *Chrysodeixis chalcites*, the tomato looper; and *Cornutiplusia circumflexa*. In the case of Israel, all plants except bulbs, dormant perennials, plants *in vitro*, and seeds that are imported into the United States would be required to be imported under this program; the main pest of concern in Israel is *Spodoptera littoralis*, the Egyptian cotton leafworm, although other quarantine pests are found in Israel and must be excluded from shipments of plants imported under this program. We anticipate that most U.S. imports under these programs would be plant cuttings, which are included in the proposed definition of *plant* in this document.

Under this proposal, the national plant protection organization of the country of origin, the growers in the country of origin, and APHIS would jointly implement the following safeguards to ensure that quarantine pests are not present in shipments of approved plants.

The national plant protection organization of the plants' country of origin would have to issue a phytosanitary certificate of inspection that would accompany any approved plants from the country of origin. This certificate would have to contain additional declarations that the plants were produced in an approved production site, that the production site is operated by a grower participating in the export program for approved plants established by the relevant national plant protection organization, and that the plants were grown under conditions specified by APHIS to prevent infestation with the relevant quarantine pests.

Growers in the programs would register with, and be approved by, the national plant protection organization of their country. Growers would be required to enter into a formal agreement wherein they agree to participate in and follow the export program for approved plants established by the national plant protection organization.

Growers would be required to meet the following requirements with respect to their facilities and growing practices:

• Plants destined for export to the United States would have to be produced in a production site devoted solely to production of such plants.

• The production sites in which such plants are produced would have to be registered with the national plant protection organization. Such production sites would employ safeguards agreed on by APHIS and the national plant protection organization to ensure the exclusion of the relevant quarantine pest or pests. For Canary Islands production sites, these safeguards would include, but would not be limited to, prescribed mesh screen size (if the production site is a screenhouse) and automatically closing doors. For Israeli production sites, these safeguards would include, but not be limited to, insect-proof screening over openings and double or airlock-type doors. Any rips or tears in any insect-proof screening would have to be repaired immediately.

• Each production site in which plants destined for export to the United States are grown would have to have at least 1 blacklight trap for one year following any of the following events: The construction of a production site; the entry of a production site into the approved plants export program; the replacement of the covering of the production site; or the detection and repair of a break or tear in the plastic or screening in the production site.

APHIS inspectors and national plant protection organization inspectors would perform the inspections described below, along with any others they may deem necessary. The inspections that would be required for plants and production sites in the Canary Islands are somewhat different from those that would be required for plants and production sites in Israel.

In the Canary Islands:

• The national plant protection organization of Spain would inspect the plants and the production site for pests during the growing season and during packing.

• Packing materials and shipping containers would be inspected and approved by APHIS to ensure that they do not introduce pests of concern to the plants.

• Either APHIS or the national plant protection organization of Spain would inspect the production site of approved plants destined for export to the United States to ensure that they meet standards of sanitation agreed upon by APHIS and the national plant protection organization of Spain.

• Inspectors from both APHIS and the national plant protection organization of Spain would have access to the production site as necessary to ensure that growers are employing the proper safeguards against infestation of *H. armigera, C. chalcites*, and *C. circumflexa*, and that those safeguards are correctly implemented.

• The national plant protection organization of Spain would provide APHIS with access to the list of registered and approved growers at least annually.

In Israel:

• The national plant protection organization of Israel would inspect the plants and the production site weekly to ensure that no quarantine pests are present.

• Plants would be inspected to ensure that they are free of quarantine pests before being allowed into the production site.

• The national plant protection organization of Israel would inspect the plants to ensure that no quarantine pests are present prior to export.

• Packing materials and shipping containers would be inspected and approved by APHIS to ensure that they do not introduce pests of concern to the plants.

• Either APHIS or the national plant protection organization of Israel would inspect the production site of the approved plants destined for export to the United States to ensure that they meet standards of sanitation approved by APHIS.

• Inspectors from both APHIS and the national plant protection organization of Israel would have access to the production site as necessary to ensure that growers are employing the safeguards and procedures prescribed by the program and that those safeguards and procedures are correctly implemented.

• The national plant protection organization of Israel would provide APHIS with access to the list of registered and approved growers at least annually.

Growers would become ineligible for participation in the export programs and their production sites would lose approved status upon slightly different occurrences for each country:

• Growers in the Canary Islands would lose eligibility if live *C. circumflexa* (or any other moth of the family Noctuidae) are found in a production site. Israeli growers would lose eligibility if live *S. littoralis* are found in a production site.

• Growers in the Canary Islands would lose eligibility if live *C. circumflexa* (or any other moth of the family Noctuidae) are found in a shipment of plants. An Israeli grower would lose eligibility if live *S. littoralis* are found at port inspection two times during the same shipping season in shipments from that grower.

• Growers in both the Canary Islands and Israel could lose eligibility if they violate the requirements of the export program established by their national plant protection organizations.

• A grower in either country could be reinstated, and the grower's production sites may regain approved status, by requesting reapproval and submitting a detailed report describing the corrective actions taken by the grower. The national plant protection organization and APHIS would have to concur in approving the report and the corrective actions.

APHIS would have the option to terminate either program if there are repeated violations of procedural or phytosanitary requirements.

The government of the country in which the approved plants are produced would also have to enter into a trust fund agreement with APHIS before each growing season. The government of the country in which the approved plants are produced or its designated representative would be required to pay in advance all estimated costs that APHIS would expect to incur through its involvement in overseeing the execution of the requirements of the certification programs described below. These costs would include administrative expenses incurred in conducting the services enumerated below and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. (Specific provisions for making payments to these proposed trust funds may be found in the rule portion of this document.)

For the reasons described above in the discussion of prohibiting the entry of articles of *Rubus* spp. from Europe that lack the appropriate phytosanitary certificate, we are also proposing to add approved plants from the Canary Islands and Israel that do not meet the requirements of proposed § 319.37–5(u)

and proposed § 319.37–5(v), respectively, to the list of prohibited items in § 319.37–2(a).

The safeguards employed in these programs, combined with the mandatory inspections of the plants at the port of first arrival in the United States, would ensure that approved plants could be safely imported into the United States from production sites in these locations.

Specific Treatment and Other Requirements

We are proposing to reorganize the regulations in § 319.37–6 so that the information in this section is presented in a table. Section 319.37–6 now contains six paragraphs that are largely composed of the same text; the variations between paragraphs are found in the seeds and bulbs being treated, the countries or localities from which seeds and bulbs that must be treated originate, the pests for which the commodity must be treated, and the time at which the treatment must be performed. We believe that presenting this information in tabular form will improve the clarity and usability of the regulations.

In addition, the regulations in § 319.37–6 provide that certain seeds and bulbs from specific foreign regions must be treated for possible infestation with various plant pests in accordance with the applicable provisions of 7 CFR part 305 at the time of importation into the United States or at the time of arrival at the port of first arrival in the United States. However, the regulations in § 319.37–13(c) specify conditions under which treatments required under the regulations may be performed outside the United States. The current regulations in § 319.37–6 do not reflect the fact that treatments of regulated articles may be administered outside the United States. Therefore, we are proposing to amend § 319.37–6 to indicate that treatment of regulated articles may be administered outside the United States. APHIS will retain the option to require treatment within the United States of regulated articles that were treated prior to importation.

Finally, all the commodities listed in § 319.37–6 are required to be treated either at ''the time of arrival at the port of first arrival in the United States'' or ''at the time of importation into the United States.'' These phrases are substantively equivalent. Rather than set this information out in the table and preserving the present wording of this requirement from each paragraph in this section, we are proposing to add a paragraph after the table that would indicate that any articles not treated outside the United States would have to be treated at the time of importation into the United States.

Kenaf Seed From Mexico

Under the current regulations in § 319.37–6(a), seeds of *Hibiscus* spp. (Hibiscus, rose mallow) from any foreign country or locality, at the time of importation into the United States, must be treated for possible infestation with *Pectinophora gossypiella* (Saunders) (pink bollworm) in accordance with the applicable provisions of 7 CFR part 305.

However, the movement of untreated kenaf (*Hibiscus cannabinus*) seed from Mexico into pink bollworm generally infested areas of the United States (listed under our domestic pink bollworm quarantine and regulations in § 301.52–2a, and currently the States of Arizona, New Mexico, and Texas, and several counties in California) would pose little or no risk of increasing the area of pink bollworm infestation. Under our domestic pink bollworm quarantine regulations in § 301.52, these generally infested areas are quarantined to prevent the spread of pink bollworm, and Kenaf seed is a regulated article under § 301.52(b) that may not be moved interstate from any quarantined State except under the conditions described in § 301.52–3.

Therefore, we are proposing to allow kenaf seed from Mexico to be imported into pink bollworm generally infested areas in the United States without treatment. Kenaf seed from Mexico that would be imported into pink bollworm generally infested areas would be subject to inspection, and, immediately upon release, would be subject to the domestic pink bollworm quarantine regulations in §§ 301.52 through 301.52–10, Subpart—Pink Bollworm. This change would harmonize the requirements of our regulations on foreign material that could spread pink bollworm with those of our domestic regulations, as required under the SPS Agreement, without increasing the likelihood that pink bollworm could spread to noninfested areas of the United States.

Although kenaf seed may be imported into the United States from countries other than Mexico with the treatment currently referred to in § 319.37–6(a), we are not proposing to allow importation of untreated kenaf seed into generally infested areas from countries other than Mexico. The available evidence indicates that pink bollworm is the only pest of concern for shipments of kenaf seed from Mexico; we do not have evidence that pink bollworm is the only pest of concern for shipments of kenaf seed from any other place. We would consider requests to allow shipments of untreated kenaf seed into generally infested areas from other countries if the available evidence indicated that pink bollworm was the only pest of concern for shipments of kenaf seed from those countries.

Postentry Quarantine Requirements for Hydrangea spp.

Under the current regulations in § 319.37–7(a), *Hydrangea* spp. from Canada imported into the United States are not required to be grown under postentry quarantine conditions. However, under the current definition of *from* in § 319.37–1, an article imported into Canada from another country or locality that is subject to postentry quarantine requirements is considered to be solely from Canada if it was grown in Canada under postentry growing conditions equivalent to those specified in § 319.37–7 and meets certain other conditions. The term ''equivalent,'' as it is used here, refers not to the specific postentry quarantine conditions imposed but their effectiveness at reducing the risk of pest introduction.

CFIA requires that *Hydrangea* spp. imported into Canada from another country or locality be grown in Canada under postentry growing conditions for 9 months. We do not currently recognize Canada's 9-month postentry growing period for *Hydrangea* spp. to be as effective at reducing pest risk as the postentry quarantine conditions specified in § 319.37–7 that apply to the importation of *Hydrangea* spp. from all countries except Canada and Japan, because the regulations in that section specify that all plants required to be grown in postentry quarantine, including *Hydrangea* spp. from all countries except Canada and Japan, must be grown in postentry quarantine conditions for 2 years after the time of importation into the United States. Therefore, *Hydrangea* spp. from another country or locality that are grown in Canada are not considered to be from Canada and are subject to the postentry quarantine requirements in § 319.37–7. (The proposed revision of the definition of *from* described above would not change this, as that definition would require that *Hydrangea* spp. be grown in conditions we recognize as equivalent to those conditions under which they would be grown if imported directly into the United States.)

CFIA has recently requested that we add specific provisions for postentry quarantine growing agreements for plants of *Hydrangea* spp. to § 319.37–7(d) that would effectively reduce the postentry quarantine period for

Hydrangea spp. from 2 years to 9 months. This request was reviewed by U.S. Department of Agriculture plant pathologists, with particular attention to the biology of the pest of concern, *Aecidium hydrangeae-paniculatea*. Their review of the available scientific evidence found that 9 months is an adequate amount of time to allow detectable symptoms of the disease to express themselves if the disease is present, which is the purpose of postentry quarantine.

Therefore, we are proposing to add a new provision in § 319.37–7(d)(7)(ii) that would require importers of *Hydrangea* spp. from all countries and localities except Canada and Japan who are operating under a postentry quarantine agreement to grow any article of *Hydrangea* spp. or increase therefrom for a period of 9 months after the importation of the plants. (*Hydrangea* spp. from Japan would continue to be prohibited from being imported or offered for entry into the United States under § 319.37–2(a).) With this proposed change, Canada's 9-month postentry growing period for *Hydrangea* spp. would be equivalent to the postentry growing conditions that would be specified in § 319.37–7; therefore, *Hydrangea* spp. from another country or locality that are grown in postentry quarantine in Canada would be considered to be from Canada and would not be required to be grown under postentry quarantine conditions after they are imported into the United States. (While the current definition of *from* indicates that a restricted article can be considered to be from Canada only after it is grown in Canada for 1 year, the proposed amendments of the definition of *from*, discussed earlier in this proposed rule, would eliminate that restriction, leaving the 9-month postentry quarantine period as the only restriction on the importation of *Hydrangea* spp. from Canada.)

The proposed change would relieve a restriction on the importation of *Hydrangea* spp. into the United States that does not appear to be necessary.

Postentry Quarantine Requirements for Chrysanthemum spp., Dendranthema spp., Leucanthemella serotina, and Nipponanthemum nipponicum

The regulations in § 319.37–7(a) designate as restricted articles any articles of *Chrysanthemum* spp., *Dendranthema* spp., *Leucanthemella serotina*, and *Nipponanthemum nipponicum* that meet the conditions for importation in § 319.37–5(c) and that are imported from any foreign locality except Argentina, Brazil, Canada, Canary Islands, Chile, Columbia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories and possession of countries located in part or entirely between 90° and 180° East longitude. Articles designated as restricted articles in § 319.37–7(a) must be grown in postentry quarantine under the conditions described in paragraphs (c) and (d) of § 319.37–7. Paragraph (d)(7)(ii) currently requires that any restricted articles of *Chrysanthemum* spp., *Dendranthema* spp., *Leucanthemella serotina*, and *Nipponanthemum nipponicum* be grown in postentry quarantine for a period of 6 months. We are proposing to reduce this postentry quarantine growing period to 2 months if the restricted articles are grown in accordance with the requirements of an APHIS-approved best management practices program.

The pest of concern with regard to imported articles of *Chrysanthemum* spp., *Dendranthema* spp., *Leucanthemella serotina*, and *Nipponanthemum nipponicum* is chrysanthemum white rust (CWR). CWR is caused by *Puccinia horiana* Henn., a filamentous fungus and obligate parasite. CWR is not established in the United States and is a disease of quarantine significance. This disease has the potential to be extremely damaging to the commercial horticulture and florist industries if it becomes established in greenhouses within the United States. The postentry quarantine for articles of *Chrysanthemum* spp., *Dendranthema* spp., *Leucanthemella serotina*, and *Nipponanthemum nipponicum* is intended to allow symptoms of the disease, if it is present, to express themselves, so that any restricted articles that might be affected with CWR can be prevented from entering U.S. commerce.

PPQ's Center for Plant Health Science and Technology has reviewed the available evidence regarding the time within which CWR will express symptoms. Although substantial evidence indicates that articles affected with CWR will express symptoms within 2 months, meaning that 2 months would be an adequate postentry quarantine period for these articles, not all the available evidence confirms that. We are proposing to reduce the postentry quarantine period for restricted articles of *Chrysanthemum* spp., *Dendranthema* spp., *Leucanthemella serotina*, and *Nipponanthemum nipponicum* to 2 months only if the articles are grown in accordance with the requirements of an APHIS-approved best management practices program.

Best management practices programs for these articles would be designed to ensure that CWR, if it is present on these articles when they are imported into the United States, is not introduced to the wider environment. A best management program would include several basic elements, including:

- A code of conduct or documented standard operating procedures that include pest control practices, inspection and testing, and recordkeeping;
- Oversight and audits by a professional organization or a State agricultural organization to ensure compliance with the agreed-upon code of conduct or standard operating procedures;
- Some form of Federal oversight; and
- Penalties and remedial action for noncompliance.

We would evaluate best management programs for their effectiveness at ensuring that any CWR that might be present on these articles would not be introduced into the wider environment.

This change would reduce the cost of postentry quarantine for importers of those restricted articles while continuing to protect against the introduction of CWR into the United States.

Plants in Growing Media From Certain Areas in Canada

We are proposing to amend § 319.37–8(b) of the regulations to allow the importation of restricted articles in growing media from two areas in Canada from which such importation is currently prohibited if those articles are grown under certain conditions. Paragraph (b) of § 319.37–8 allows the importation of restricted articles from Canada in any growing medium, except restricted articles from Newfoundland or from that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road. Restricted articles from these areas may not enter in growing media because of the presence of potato cyst nematodes (*G. rostochiensis* and *G. pallida*) in those parts of Canada.

We have determined that restricted articles that are grown in approved growing media and are isolated in such a manner as to prevent the restricted articles from being infested with potato cyst nematodes may be imported safely into the United States from these areas. Therefore, we are proposing to allow the importation of restricted articles in approved growing media from these areas in Canada if the phytosanitary certificate accompanying the articles

contains an additional declaration. (Production sites in the area of Canada where potato cyst nematodes are present are not eligible to participate in the Canadian greenhouse-grown plants program in § 319.37–4(c) due to the presence of the potato cyst nematodes, so all articles imported into the United States from these production sites are required to be accompanied by a phytosanitary certificate under § 319.37–4(a).) The additional declaration would have to state that the restricted articles were produced in a production site approved by the national plant protection organization of Canada as capable of isolating the plants from potato cyst nematode infestation and that the restricted articles were isolated from potato cyst nematode infestation throughout their production. Allowing the importation of restricted articles from these areas under the conditions described above would give importers flexibility while continuing to protect against the introduction of potato cyst nematodes into the United States.

Additions to the List of Approved Growing Media

We are proposing to add unused clay pots and new wooden baskets to the list of growing media approved for epiphytic plants found in § 319.37–8(d). Such media are used by many nurseries. We are proposing these additions at the request of importers. We believe that unused clay pots and new wooden baskets would be as safe as the current approved growing media.

Federal Plant Inspection Stations and Other Ports of Entry

Under the current regulations in § 319.37–14(a), restricted articles of nursery stock, plants, roots, bulbs, seeds, and other plant products that are not required to be imported under a written permit pursuant to § 319.37–3(a)(1) through (a)(6) may be imported or offered for importation at any of the ports of entry listed in § 319.37–14(b) or at any Customs designated port of entry on the United States-Canada border. A complete list of Customs designated ports of entry can be found in 19 CFR part 101.

Restricted articles of nursery stock, plants, roots, bulbs, seeds, and other plant products required to be imported under a written permit pursuant to § 319.37–3(a)(1) through (a)(6) must be imported or offered for importation only at plant inspection stations, which are ports with special inspection and treatment facilities. Plant inspection stations are listed and designated by an asterisk in § 319.37–14(b). We are proposing to revise § 319.37–14 and related regulations in 7 CFR part 330 to relieve unnecessary restrictions on the entry of regulated articles and to make the regulations easier to use.

First, the list of ports of entry in § 319.37–14(b) does not include all current plant inspection stations. We are therefore proposing to make the necessary updates to this list. This includes removing the entry for the plant inspection stations that were in Brownsville, TX, and Hoboken, NJ, and updating the addresses for some plant inspection stations.

We are also proposing to add a new entry for a plant inspection station in New Jersey. In order to be designated as a plant inspection station, a building must have adequate space for inspection areas to be set up, laboratory facilities for pest and disease identification, provide easy access by shipments for inspection, and, in most cases, contain various treatment facilities. We have determined that the facility in Linden, NJ, satisfies the criteria for designation as a plant inspection station.

Furthermore, it is not necessary to list ports of entry other than plant inspection stations in § 319.37–14(b). APHIS can handle, either through direct staffing or through cooperation with the Department of Homeland Security's Bureau of Customs and Border Protection, imports of restricted articles that are not required to be imported with a permit at any Customs designated port of entry, though there may be exceptions in the future. Therefore, we are proposing to amend the regulations to indicate that restricted articles not required to be imported under a written permit pursuant to § 319.37–3(a)(1) through (a)(6) may be imported or offered for importation at any Customs designated port of entry indicated in our regulations in 7 CFR 330.104.

Section 330.104 contains the general provisions for ports of entry that apply to 7 CFR chapter III. We are proposing to amend these provisions as well. Under § 330.104, ports of entry for articles regulated under 7 CFR chapter III shall be selected by the Deputy Administrator from ports named in 19 CFR part 1.2 as ''ports of entry'' or 19 CFR part 6.13 as ''international airports.'' However, 19 CFR parts 1.2 and 6.13 have been removed and, as previously noted, the complete list of Customs designated ports of entry is now contained in 19 CFR part 101.3(b)(1). Therefore, to update the regulations in § 330.104, we are proposing to remove all references to 19 CFR parts 1.2 and 6.13 in 7 CFR chapter III and to add references to 19 CFR part 101.3(b)(1) in their place.

As mentioned above, though APHIS can currently handle imports of restricted articles that are not required to be imported with a permit at any Customs designated port of entry, there may be exceptions in the future. Therefore, we are also proposing to add to § 330.104 a list of exceptions to the ports of entry in 19 CFR part 101.3(b)(1) that will indicate those ports of entry through which articles regulated under 7 CFR chapter III may not be imported. This list would be blank as of the publication of this proposed rule, but we would update the list as necessary.

These changes would eliminate the need to list the ports of entry that are not plant inspection stations in § 319.37–14. Therefore, we are proposing to remove those ports of entry that are not plant inspection stations from the list in that section. We would further amend § 319.37–14 to list the remaining Federal plant inspection stations in the form of a table, for easier reference.

Under the current regulations in § 319.37–14, any restricted article from Canada that is not required to be imported under a written permit pursuant to § 319.37–3(a)(1) through (a)(6) may be imported at any port of entry listed in § 319.37–14(b), or at any Customs designated port of entry on the United States-Canada border. However, for the reasons discussed above, we are proposing to allow restricted articles that are not required to be imported with a permit to be imported at any Customs designated port of entry with limited exceptions that would be listed in § 330.104. Therefore, we are also proposing to remove the provisions in § 319.37–14(b) regarding restricted articles from Canada, because they would no longer be necessary.

The current regulations in § 319.37–14 provide that any restricted article of nursery stock that is required to be imported under a written permit must be imported or offered for importation only at a plant inspection station. However, articles that are required to be imported under a written permit and that have been precleared or treated in the country of export have already fulfilled the necessary conditions for importation into the United States; because they have fulfilled these conditions, they do not need to pass through special inspection and treatment facilities at plant inspection stations, but rather can enter U.S. commerce freely after being released from the port of entry by an inspector. Therefore, we are proposing to add a provision in § 319.37–14 stating that

restricted articles that are required to be imported under a written permit and that have been precleared or treated in the country of export may enter through any Customs designated port of entry, including any ports that might in the future be excepted in § 330.104, since it will be unnecessary to ensure that APHIS has a staffing presence in place at ports that receive these articles.

To reflect the proposed changes to § 319.37–14, we are also proposing to update references to the section that appear in 7 CFR parts 319, 322, and 340.

Editorial Changes

We are proposing to replace certain country names in the regulations to reflect geopolitical changes. Specifically, we would replace references to Czechoslovakia with references to the Czech Republic and Slovakia; replace references to the Federal Republic of Germany and the German Democratic Republic with references to Germany; replace references to the Union of Soviet Socialist Republics with references to Armenia, Azerbaijan, Belarus, Estonia, Georgia, Latvia, Lithuania, Kazakhstan, Kyrgyzstan, Republic of Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan; and replace references to Yugoslavia with references to Croatia, Serbia and Montenegro, and Slovenia. These changes would update the regulations.

The definition of *bulbs* in § 319.37–1 refers to a single article. We are proposing to change the defined term to *bulb* so that the definition refers consistently to a single article.

Paragraph (c)(2) of § 319.37–2 contains a reference to the Plant Germplasm Quarantine Center, Building 320, Beltsville Agricultural Research Center East, Beltsville, MD 20705. This center has been renamed the National Plant Germplasm Inspection Station and is located in Building 580 of the Beltsville Agricultural Research Center. We are proposing to correct this address to update the regulations. To make the regulations in 7 CFR part 319 consistent, we would make the same update in paragraphs (b)(1) and (b)(2) of § 319.59–2 and paragraph (c)(2) of § 319.75.

Paragraph (a)(3) of § 319.37–3 refers to ''*Alium sativum* spp.'' *Alium sativum* is the species name for this article; the ''spp.'' is incorrect, and we are proposing to remove it.

Paragraph (a)(8) of § 319.37–3 requires a permit for articles (except seeds) of *Castanea* spp. or *Castanopsis* spp. destined to California or Oregon. In a final rule published in the **Federal Register** on September 18, 1992 (57 FR 43134–43151) and effective October 19, 1992, we added *Castanea* spp. to the list of prohibited articles in § 319.37–2(a). However, we failed to update paragraph § 319.37–3(a)(8) at that time. Therefore, we are proposing to remove the reference to *Castanea* spp. in § 319.37–3(a)(8).

Paragraph (b) of § 319.37–3 sets out the address to which applications for a permit to import regulated articles should be sent. In this address, the staff previously known as ''Port Operations'' is now known as ''Permits, Registrations, Imports and Manuals.'' We are proposing to update that address.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the effects of this proposed rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments concerning potential economic effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule.

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests and noxious weeds.

We are proposing to amend the regulations on importing nursery stock to eliminate certain restrictions on the importation of plants *in vitro*, kenaf seed, and *Hydrangea* spp.; to establish programs for the importation of approved plants; to address recent changes in pest distributions; to change the phytosanitary certificate requirements for several restricted articles; and to update the list of ports of entry and Federal plant inspection stations. We are also proposing several other changes to update and clarify the regulations and improve their effectiveness. This proposal would relieve restrictions that appear unnecessary and would update the existing regulations and make them easier to understand and implement. The potential economic effects of the changes proposed in this document are discussed below, by topic.

Several changes we are making, such as adding and changing definitions and reorganizing § 319.37–14, are administrative in nature and are not expected to have any impact on any U.S. entities, whether small or large. This analysis examines the potential economic effects of changes that could potentially have economic effects.

Rubus spp. From Europe

There are more than 400 species of *Rubus* in the temperate areas of the world. These are divided into subcategories that include dewberries, blackberries, and raspberries. Most species of *Rubus* grow as shrubs or trailing vines with thorny points. We are proposing to add *Rubus* spp. from Europe not meeting the conditions for importation in § 319.37–5(f) to the list of prohibited articles in § 319.37–2(a). *Rubus* stunt agent (*Phytoplasma*) is a leafhopper-borne agent that causes damage to foliage and flowers. *Rubus* stunt agent has caused direct damage to European fruits through yield loss.[2] This proposed amendment to § 319.37–2 would have no effect on domestic producers and consumers, while safeguarding the multi-million dollar U.S. berry production industry (2002).[3]

Plants In Vitro

We are proposing to remove the requirement that lots of 13 or more items of plants *in vitro* may only be imported after issuance of a written permit by PPQ, unless their importation is prohibited or restricted elsewhere in the nursery stock regulations. This change would allow plants *in vitro* to enter at a greater number of ports. We are also proposing to remove the requirement for a phytosanitary certificate for imported plants *in vitro*, unless their importation is prohibited or restricted elsewhere in the nursery stock regulations. We are proposing these changes because the risk of plant pest introduction via plants *in vitro* is extremely low and these requirements are unnecessary. We have no reason to expect that making plants *in vitro* generally admissible through the proposed changes would have a significant effect on domestic producers and consumers. However, we invite the public to submit data on the possible effects of these proposed changes.

[2] Gordon S.C., et al. Progress towards Integrated Crop Management (ICM) for European Raspberry Production.

[3] National Agricultural Statistical Survey (NASS), Noncitrus Fruits and Nuts: Price and Value for the United States, 2000–2002.

We are also proposing to remove the requirement in § 319.37–8(c) that growing media imported along with a restricted article be transparent or translucent, thus allowing charcoal to be used in growing media for plants *in vitro*. Allowing the use of charcoal as an additive to growing media makes APHIS requirements up-to-date with the current industry standards. We have no reason to expect that allowing the use of charcoal in growing media for plants would have a significant effect on domestic producers and consumers. However, we invite the public to submit data on the possible effects of this proposed change.

Genus and Species Name on Phytosanitary Certificates

We are proposing to require that the phytosanitary certificate that must accompany any restricted article presented for importation into the United States under § 319.37–4(a) include the genus and species name of the restricted article that it accompanies. Although this information is not currently required to be given to APHIS, this information is already available for the vast majority of importers and exporters on the invoices that typically also accompany restricted articles presented for importation into the United States. For this reason, we believe that this proposed change would not have a significant impact on any entities, whether large or small.

Phytosanitary Certificates for Bulbs From the Netherlands

We are proposing to allow bulbs from the Netherlands to enter the United States with a special certificate in lieu of a phytosanitary certificate. The special certificate would list special identification information for the shipment, including a serial number referring to the phytosanitary certificate on file in the Netherlands. The United States imported $145 million worth of bulbs and tubers from the Netherlands in 2001. This proposed change would expedite entry of bulbs and tubers from the Netherlands when they are carried in small amounts by individuals. We have no reason to expect that this change would have a significant effect on domestic producers and consumers of bulbs and tubers. However, we invite the public to submit data on the possible effects of this proposed change.

Importation of Certain Seeds From Canada

We are proposing to amend § 319.37–4 to exempt certain Canadian seeds from the requirement for a phytosanitary certificate. Certain seeds from specific establishments in Canada would be able to enter the United States with proper identification and an alternative document in lieu of the required phytosanitary certificate. The alternative document would be an export certification label and a document agreed upon by APHIS and CFIA. This change would eliminate redundant paperwork requirements in the nursery stock regulations and the Federal Seed Act regulations in 7 CFR part 361.

The United States imported $108 million worth of planting seeds from Canada in 2001 while exporting $134 million planting seeds to Canada. The United States exported $754 million worth of planting seeds worldwide in 2001.[4] This amendment would allow the United States and Canada to trade seed more freely, benefitting both countries with negligible impacts to domestic producers and consumers of seeds.

Blueberry Plants From Canada

We are proposing to amend § 319.37–5 to require that *Vaccinium corymbosum* plants from Canada be accompanied by a phytosanitary certificate with an additional declaration stating they are free of blueberry scorch carlavirus. Blueberry production in the United States was worth $208 million in 2002.[5] This additional declaration would help to safeguard U.S. producers from virulent strains of the virus that only exist in Canada while continuing to allow imports of blueberry plants from Canada. This proposed amendment would have a negligible impact on domestic producers and consumers of blueberry plants.

Importation of Pelargonium Plants From the Canary Islands

We are proposing to require that *Pelargonium* spp. plants from the Canary Islands be grown under certain conditions and accompanied by a phytosanitary certificate. A phytosanitary certificate with an additional declaration confirming that those growing conditions have been met for *Pelargonium* spp. plants would minimize risk that such organisms such as *Helicoverpa armigera, Chrysodexixis chalcites* and *Cornutiplusia circumflexa* might enter the United States. No export data are currently available for the Canary Islands regarding plant cuttings. We invite the public to submit data on the possible effects of this proposed change.

Importation of Approved Plants From Israel

We are proposing to require that plants from Israel be grown under certain conditions and accompanied by a phytosanitary certificate along with an additional declaration confirming that those growing conditions have been met. Plants from Israel run the risk of harboring plant pests such as *Spodoptera littoralis* and other pests which could be introduced to the United States. *S. littoralis* is associated with cotton production losses around the world. Without control measures, *S. littoralis* could inflict heavy damage to both the yield and quality of U.S. cotton production.

Israel exported $1.9 million worth of plant cuttings to the United States in 2001, while the United States exported $11.7 million worth of cuttings to the world.[6] This change would help to safeguard the $3.6 billion worth of U.S. cotton production (2002).[7] We have no reason to expect that this change would have a significant effect on importers of plants from Israel or on domestic cotton producers and consumers. However, we invite the public to submit data on the possible effects of this proposed change.

Treatment of Regulated Articles

Under the current regulations in § 319.37–4(b), any restricted article may be sampled and inspected by an inspector under preclearance inspection arrangements in the country in which the article was grown, and must undergo any treatment contained in 7 CFR part 305 that is ordered by the inspector. We are proposing to add a paragraph to § 319.37–6 that would explicitly indicate that treatment of regulated articles of nursery stock may be administered outside the United States. We believe that this changes would not have any significant impact on any U.S. entities, whether small or large.

Kenaf Seed From Mexico

Under the current regulations in § 319.37–6(a), seeds of *Hibiscus* spp. (Hibiscus, rose mallow) from any foreign country or locality, at the time of importation into the United States, must be treated for possible infestation with pink bollworm in accordance with the applicable provisions of 7 CFR part 305. We are proposing to provide an exception to the restriction for seeds of kenaf from Mexico that are imported into pink bollworm generally infested

[4] Foreign Agricultural Service, 2001.

[5] NASS, Noncitrus Fruits and Nuts: Price and Value by Crop, US, 2000–2002.

[6] FAS., U.S. Trade Statistics, Israel and US, plant cuttings code # 06021, 2001.

[7] USDA–NASS, U.S. cotton production value 2002.

areas in the United States. The States of Arizona, New Mexico, and Texas, and specific counties in California are pink bollworm generally infested areas. Under our proposed rule, shipments of untreated kenaf seed from Mexico would be authorized entry into those pink bollworm generally infested areas subject to inspection. Immediately upon release, those shipments would be subject to the domestic pink bollworm quarantine regulations in §§ 301.52 through 301.52–10, Subpart-Pink Bollworm.

Allowing the importation of untreated kenaf seed from Mexico into pink bollworm generally infested areas may have economic effects on some U.S. entities; however, if effects occurred, they would be small, given that the United States imports mainly processed kenaf and very little seed and raw fiber.[8] For example, on average between 1999 and 2001, the United States imported 0.3 percent of world imports of raw (seeds are included) kenaf (table 1). U.S. demand for imported kenaf seed from Mexico is not expected to increase significantly as a result of the proposed change.

Kenaf is an annual herbaceous plant of the Malvaceae family, and its flowers are closely related to those of cotton, okra, and hollyhock. Latin America, including Mexico, produces about 5 percent of the world's kenaf seed and fiber (table 2). Kenaf seed can grow in many parts of the United States, but it generally needs a long, warm growing season to produce the necessary yield to make it a profitable crop. Such a climate can only be found in the southern United States. Primary production areas in the United States are Texas (lower Rio Grande Valley), Louisiana, Mississippi, Georgia, and Florida. An estimated 8,000 acres of kenaf was grown in the United States in 1997.[9]

TABLE 1.—WORLD IMPORTS OF RAW KENAF SEEDS & FIBERS (METRIC TONS)

Calendar year	1999	2000	2001
United States	2,400	800	500
Mexico	0	0	0
Rest of the world	330,300	288,200	272,200
World	332,700	289,000	272,700

TABLE 2.—WORLD PRODUCTION OF RAW KENAF SEEDS & FIBERS (METRIC TONS)

Crop year	1999–2000	2000–2001	2001–2002
Developed countries [1]	7,000	7,000	7,000
Latin America [2]	25,400	24,100	12,500
Rest of the world	427,100	388,300	409,800
World	459,500	419,400	440,500

[1] Developed countries include Europe, United States, Australia, New Zealand, Japan, and former Soviet Republics.
[2] Latin America includes Mexico.
Source: Food & Agriculture Organization of the U.N., Commodities and Trade Division, *Current Situation & Short Term Outlook for Hard Fibers, Kenaf, Jute, & Allied Fibers Statistics,* December 2002.

The number and size of the entities that might be affected by this proposed change is unknown. APHIS requests that the public provide information regarding the kind and the number of entities that might be affected.

Postentry Quarantine Requirements for Hydrangea spp.

We are proposing to decrease the amount of time imported *Hydrangea* spp. must be grown in postentry quarantine conditions from 2 years to 9 months. This proposed change could affect the volume of *Hydrangea* spp. imported into the United States because it would decrease the cost associated with growing *Hydrangea* spp. in postentry quarantine conditions after importation into the United States. With this change, Canada's 9-month postentry growing period for *Hydrangea* spp. would be equivalent to the postentry quarantine conditions specified in § 319.37–7. *Hydrangea* spp. from another country or locality that are imported into Canada and grown in accordance with Canadian postentry growing requirements would be considered to be from Canada and would no longer be required to be grown under postentry quarantine conditions for 2 years after the time of importation into the United States. Therefore, this change would relieve restrictions on the importation of *Hydrangea* spp. from Canada.

Hydrangeas are summer-flowering shrubs which are usually shipped in the late fall through early winter, after they have received a cold storage treatment. There are nine main *Hydrangea* varieties in the world. Only two, *Hydrangea arborescens* and *Hydrangea quercifolia*, are native to the United States; the other seven are native to Asia.[10] The popularity and production of hydrangeas have both been increasing in the past few years in the United States and so has demand for them. Thus, the shorter quarantine period for imported *Hydrangea* spp. would benefit the U.S. public. However, it is difficult to measure the size of any possible economic impact of this proposed change in postentry quarantine duration for imported hydrangeas.

The number and size of the entities that might be affected by this proposed change is unknown. APHIS requests that the public provide information regarding the kind and the number of entities that might be affected.

[8] The primary focus of the kenaf development has been on the newsprint industry with its annual world production near the 30 million tons level (Scott & Taylor, 1990). U.S. publishers and other users account for nearly half of the world's total consumption of the processed kenaf. Annual production of newsprint in the United States is approximately 5 million tons. Traditionally, imports of processed kenaf have accounted for about 60 percent of U.S. consumption and demand has steadily increased at about 2.5 percent annually.

[9] Economic Research Service, USDA, FLO–2002, May 2002. Floriculture and Nursery Crops. Situation and Outlook Yearbook.

[10] Hydrangeas: Arboresscens (U.S. native), Quercifolia (U.S. native), Aspera, Involucrata, Macrophylla Normalis, Macrophylla, Paniculata, Anomala, & Macrophylla Serrata.

Postentry Quarantine Requirements for Chrysanthemum spp., Dendranthema spp., Leucanthemella serotina, and Nipponanthemum nipponicum

We are proposing to decrease the amount of the time that certain imported chrysanthemums (i.e., *Chrysanthemum* spp., *Dendranthema* spp, *Leucanthemella serotina*, and *Nipponanthemum nipponicum*) must be grown in postentry quarantine conditions from 6 months to 2 months if the articles are grown in accordance with the requirements of an APHIS-approved best management practices program. The proposed change would affect the volume of chrysanthemums imported into the United States because it would likely decrease the cost associated with growing them in postentry quarantine conditions after their importation. PPQ has determined that imported chrysanthemums that might be affected with chrysanthemum white rust (CWR) are likely to express symptoms of this disease if it is present within a 2-month postentry quarantine period; the extra safeguards required by a best management practices program act as an additional mitigation against the risk of articles with CWR introducing the disease into the wider environment. Articles identified as being affected with CWR can then be prevented from entering U.S. commerce.

The economic effects of the proposed change are expected to be positive, if small, for U.S. importers of chrysanthemums and the U.S. public. The popularity of chrysanthemums in the United States has been increasing and so has demand for them. In 2003, the value of imported chrysanthemums was around $83.4 million, or 7 percent of the value of all imported flowers (i.e., fresh cut flowers and florist plants).[11] In the same year, the wholesale value of the domestic sales of chrysanthemums reached $95 million.[12] APHIS's efforts to prevent the introduction of CWR safeguard the $14 billion U.S. floriculture and nursery crop industries.

The shorter postentry quarantine period for imported chrysanthemums would benefit both U.S. importers and U.S. consumers. This proposed change would reduce the cost to the chrysanthemum importers, and those savings may be passed along to U.S. buyers of these flowers in the form of lower retail prices. However, the costs of implementing and maintaining an APHIS-approved best management practices program, as well as the benefits from the shorter quarantine period, are unknown. Therefore, it is difficult to measure the size of the economic impact of this proposed change in postentry quarantine duration for the chrysanthemums.

The number and size of entities that might be affected by this proposed change is unknown. APHIS requests the public provide information regarding the kind and the number that might be affected.

Plants in Growing Media From Certain Areas in Canada

We are proposing to amend § 319.37–8(b) allow importation of restricted plant articles from areas of Canada that are infested with potato cyst nematodes as long as they are grown in approved media and isolated from potato cyst nematodes. APHIS has determined that restricted articles from these areas that are grown in approved media can be isolated in such a manner as to prevent the introduction of potato cyst nematodes. These articles would be allowed to be imported if they are grown in approved media and are accompanied by a phytosanitary certificate with an additional declaration stating that the facility in which they were produced is capable of isolating the plants from nematodes and that the plants were isolated from nematodes throughout their production. Allowing these restricted articles to enter under these conditions would increase the flexibility of imports while protecting the United States against potato cyst nematode infestation. We have no reason to expect that this change would have a significant effect on domestic producers and consumers of nursery stock. However, we invite the public to submit data on the possible effects of this proposed change.

Additions to the List of Approved Growing Media

We are proposing to amend § 319.37–8(d) to allow unused clay pots and new wooden baskets to be used as a growing media for epiphytic plants. No trade information is currently available for clay pots and wooden baskets. Planting epiphytic plants into new wooden baskets and unused clay pots is a standard nursery practice. Importers have requested that APHIS amend the regulations to allow them to import plants in wooden baskets and clay pots. Neither medium is believed to pose a pest risk. We have no reason to expect that this change would have a significant effect on domestic producers and consumers of nursery stock. However, we invite the public to submit data on the possible effects of this proposed change.

Federal Plant Inspection Stations and Other Ports of Entry

We are proposing to add a plant inspection station in Linden, NJ, to the list of Federal plant inspection stations in § 319.37–14. Adding this facility to the list of Federal plant inspection stations would make importation of nursery stock more convenient and possibly less costly for domestic sellers and consumers without reducing the effectiveness of the regulations.

This proposed rule contains new information collection or recordkeeping requirements (see ''Paperwork Reduction Act'' below).

Executive Order 12988

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

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 03–002–1. Please send a copy of your comments to: (1) Docket No. 03–002–1, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

In this document, we are proposing to amend the regulations on importing nursery stock to eliminate various restrictions on the importation of plants *in vitro* and kenaf seed; to establish programs for the importation of approved plants from the Canary Islands and from Israel; to require an additional declaration on the phytosanitary certificate accompanying blueberry plants imported from Canada; to require

[11] USDA, FAS, U.S. Trade Statistics, HS 10 Digit Imports 0603107010, 0603107020, 0602903010.

[12] USDA, ERS, Floriculture and Nursery Crops Outlook, Electronic Outlook Report, FLO–1, September 12, 2002.

that phytosanitary certificates include the genus and species names of the restricted articles they accompany; to change the phytosanitary certificate requirements for several restricted articles; to reduce the postentry quarantine growing period for *Hydrangea* spp. and for certain chrysanthemums; and to update the list of ports of entry and Federal plant inspection stations. We are also proposing several other changes to update and clarify the regulations and improve their effectiveness. This proposal would relieve restrictions that appear unnecessary and would update the existing regulations and make them easier to understand and implement.

These changes will necessitate the use of certain information collection activities, including the completion of phytosanitary certificates.

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

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

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

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

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

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.2774 hours per response.

Respondents: Importers of nursery stock and foreign officials.

Estimated annual number of respondents: 804.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 804.

Estimated total annual burden on respondents: 223 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Government Paperwork Elimination Act Compliance

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

Lists of Subjects

7 CFR Part 319

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

7 CFR Part 330

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 340

Administrative practice and procedure, Biotechnology, Genetic engineering, Imports, Packaging and containers, Plant diseases and pests, Transportation.

Accordingly, we propose to amend 7 CFR parts 319, 330, and 340 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

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

§ 319.28 [Amended]

2. In § 319.28, the introductory text of paragraph (b)(7) would be amended by removing the word ''listed'' and adding the word ''identified'' in its place.

3. Section 319.37–1 would be amended as follows:

a. By removing the definition for *bulbs*.

b. By adding new definitions, in alphabetical order, for *bulb, plant, plants in vitro, preclearance, regulated plants*, and *State* to read as set forth below.

c. By revising the definitions for *from, inspector, person, plant pest, restricted article*, and *United States* to read as set forth below.

§ 319.37–1 Definitions.

* * * * *

Bulb. The portion of a plant commonly known as a bulb, bulbil, bulblet, corm, cormel, rhizome, tuber, or pip, and including fleshy roots or other underground fleshy growths, a unit of which produces an individual plant.

* * * * *

From. An article is considered to be ''from'' an exporting country or area when it was grown or propagated only in the exporting country or area, or when it was grown in the exporting country or area after it entered the exporting country or area from another country or area under conditions that are equivalent to those that would be required by the United States if the plant were imported into the United States directly from any of the countries or areas where the plant was grown prior to its entry into the exporting country or area.

* * * * *

Inspector. Any individual authorized by the Administrator of APHIS or the Commissioner of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this part.

* * * * *

Person. Any individual, partnership, corporation, association, joint venture, or other legal entity.

* * * * *

Plant. Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

Plant pest. Any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of these articles.

Plants in vitro. Plants in an aseptic medium in a closed container.

* * * * *

Preclearance. Phytosanitary certification and/or clearance in the country in which the articles were grown, performed by or under the regular supervision of APHIS.

* * * * *

Regulated plant. Any gymnosperm, angiosperm, fern, or fern ally. Gymnosperms include cycads, conifers, and gingko. Angiosperms include any

flowering plant. Fern allies include club moss, horsetail, whisk fern, spike moss, and quillwort.

Restricted article. Any class of nursery stock or other regulated plant, root, bulb, seed, or other plant product, for or capable of propagation, excluding any prohibited articles listed in § 319.37–2(a) or (b) of this subpart, and excluding any articles regulated in §§ 319.8 through 319.24 or 319.41 through 319.74–4 and any articles regulated in part 360 of this chapter.

* * * * *

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

* * * * *

United States. All of the States.

4. Section 319.37–2 would be amended as follows:

a. In the table in paragraph (a), new entries for ''*Pelargonium* spp. plants not meeting the requirements for importation in § 319.37–5(u)'', ''Plants (except bulbs, dormant perennials, plants *in vitro* and seeds) not meeting the requirements for importation in § 319.37–5(v)'', ''*Rubus* spp. not meeting the conditions for importation in § 319.37–5(f)'', and ''*Vaccinium corymbosum* plants not meeting the conditions for importation in § 319.37–5(t)'' would be added, in alphabetical order, to read as set forth below.

b. Paragraph (c)(2) would be amended by removing the words ''Plant Germplasm Quarantine Center, Building 320'' and adding the words ''National Plant Germplasm Inspection Station, Building 580'' in their place; and by removing the words ''at a port of entry designated by an asterisk in § 319.37–14(b)'' and adding the words ''through any Federal plant inspection station listed in § 319.37–14'' in their place.

§ 319.37–2 Prohibited articles.

(a) * * *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
* * *	*	* * *
Pelargonium spp. plants not meeting the conditions for importation in § 319.37–5(u).	Canary Islands (Spain)	*Helicoverpa armigera, Chrysodeixis chalcites,* and *Cornutiplusia circumflexa.*
* * *	*	* * *
Plants (except bulbs, dormant herbaceous perennials, plants *in vitro,* and seeds) not meeting the conditions for importation in § 319.37–5(v).	Israel	*Spodoptera littoralis* and other quarantine pests.
* * *	*	* * *
Rubus spp. not meeting the conditions for importation in § 319.37–5(f).	Europe	*Rubus* stunt agent.
* * *	*	* * *
Vaccinium corymbosum plants not meeting the conditions for importation in § 319.37–5(t).	Canada	Blueberry scorch carlavirus.
* * *	*	* * *

* * * * *

5. Section 319.37–3 would be amended as follows:

a. In paragraph (a)(3), by removing the word ''spp.'' the first time it occurs.

b. By revising paragraph (a)(5) to read as set forth below.

c. In paragraph (a)(8), by removing the words ''*Castanea* spp. (chestnut) or''.

d. In paragraph (b), in the introductory text of the paragraph and in footnote 4, by removing the words ''Port Operations'' and adding the words ''Permits, Registrations, Imports and Manuals'' in their place.

§ 319.37–3 Permits.

(a) * * *

(5) Lots of 13 or more articles (other than seeds, bulbs, or plants *in vitro* whose importation is not otherwise prohibited or restricted in this subpart) from any country except Canada;

* * * * *

6. Section 319.37–4 would be amended as follows:

a. By revising paragraph (a) to read as set forth below.

b. By adding a new paragraph (d) to read as set forth below.

§ 319.37–4 Inspection, treatment, and phytosanitary certificates of inspection.

(a) *Phytosanitary certificates of inspection.* Any restricted article offered for importation into the United States must be accompanied by a phytosanitary certificate of inspection. The phytosanitary certificate must include the genus and species name of the restricted article that it accompanies. Phytosanitary certificates are not required for the following restricted articles:

(1) Plants *in vitro* whose importation is not otherwise restricted or prohibited by this subpart.

(2) Greenhouse-grown plants from Canada imported in accordance with paragraph (c) of this section. These plants must be accompanied by a certificate of inspection in the form of a label in accordance with paragraph (c)(1)(iv) of this section attached to each carton of the articles and to an airway bill, bill of lading, or delivery ticket accompanying the articles.

(3) Seeds from Canada imported in accordance with paragraph (d) of this section. Each carton of seed must be labeled as required by (d)(2)(ii). Each shipment of seed must be accompanied by the documents in (d)(2)(iii) and (d)(2)(iv), as necessary.

(4) Bulbs from the Netherlands accompanied by a special certificate that lists a serial number, the scientific name of the bulb, the country of its origin, and a date on which the special certificate expires. The serial number must refer to a phytosanitary certificate issued, held, and retrievable upon request by the national plant protection organization of the Netherlands. The expiration date must be 4 weeks after the issuance of the phytosanitary certificate held by the national plant protection organization of the Netherlands. Shipments of bulbs from the Netherlands accompanied by this certificate may be imported into the

United States without preclearance by APHIS.

* * * * *

(d) *Certain seeds from Canada.* Seeds imported from Canada may be imported without a phytosanitary certificate if the following conditions are met:

(1) The Canadian Food Inspection Agency shall:

(i) Establish and administer a seed export program under which Canadian exporters of seed may operate;

(ii) Assign a unique identification number to each exporting establishment enrolled in and approved by the seed inspection program;

(iii) Provide APHIS with a current list of the establishments participating in its seed export program and their names, locations, telephone numbers, and establishment identification numbers at the start of the shipping season, and provide regular updates to that list throughout the shipping season;

(iv) Enter into an agreement with APHIS that specifies the documents that must accompany shipments of seeds under the seed export program:

(A) Agricultural and vegetable seeds, as listed in the Federal Seed Act regulations in part 361 of this chapter, must be accompanied by a document certifying that the relevant provisions of the Federal Seed Act have been followed;

(B) Other seeds must be accompanied by a document certifying that the seeds have been inspected.

(2) Each seed exporter participating in the seed export program shall enter into an agreement with the Canadian Food Inspection Agency in which the exporter agrees to:

(i) Practice any and all safeguards the Canadian Food Inspection Agency may prescribe in order to ensure that seed exported to the United States is free of plant pests and that seed that does not meet the requirements for exportation to the United States is separated from seed that does;

(ii) Include an export certification document with each shipment indicating the common name of the seed, the country of origin of the seed, the establishment identification number assigned to the exporting establishment under the Canadian Food Inspection Agency's seed export program, and the lot number in addition to all other information required to be present by § 361.3 of this chapter.

(iii) Include other shipping documents as required with each shipment:

(A) Shipments of agricultural and vegetable seeds, as listed in the Federal Seed Act, must be accompanied by a document certifying that the relevant provisions of the Federal Seed Act regulations in part 361 of this chapter have been followed, as agreed upon by the Canadian Food Inspection Agency and APHIS;

(B) Shipments of other seeds must be accompanied by a document certifying that the seeds have been inspected, as agreed upon by the Canadian Food Inspection Agency and APHIS.

7. Section 319.37–5 would be amended as follows:

a. In paragraph (a), by revising the country list at the end of the paragraph to read as set forth below.

b. In paragraph (b)(1), by removing the words ''Federal Republic of Germany'' and replacing them with the word ''Germany''.

c. In paragraphs (j)(1) and (j)(1)(i), by removing the words ''Federal Republic of Germany'' and replacing them with the word ''Germany'' each time they appear.

d. By adding new paragraphs (t), (u), and (v) to read as set forth below.

§ 319.37–5 Special foreign inspection and certification requirements.

(a) * * *

Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Azores, Belarus, Belgium, Bolivia, Bulgaria, Canada (only that portion comprising Newfoundland and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road), Channel Islands, Chile, Colombia, Costa Rica, Crete, Croatia, Cyprus, Czech Republic, Denmark (including Faeroe Islands), Ecuador, Egypt, Estonia, Finland, France, Georgia, Germany, Great Britain, Greece, Guernsey, Hungary, Iceland, India, Ireland, Italy, Japan, Jersey, Jordan, Latvia, Lebanon, Lithuania, Luxembourg, Kazakhstan, Kyrgyzstan, Malta, Mexico, Republic of Moldova, Morocco, the Netherlands, New Zealand, Northern Ireland, Norway, Pakistan, Panama, Peru, the Philippines, Poland, Portugal, Russian Federation, Serbia and Montenegro, South Africa, Spain (including Canary Islands), Slovakia, Slovenia, Sweden, Switzerland, Tajikistan, Tunisia, Turkmenistan, Ukraine, Uzbekistan, and Venezuela.

* * * * *

(t) For any *Vaccinium corymbosum* plants from Canada, the phytosanitary certificate of inspection required by § 319.37–4 must contain an additional declaration that such article was found by the national plant protection organization of Canada to be free of blueberry scorch carlavirus.

(u) *Special foreign inspection and certification requirements for Pelargonium spp. plants from the Canary Islands. Pelargonium* spp. plants from the Canary Islands may only be imported into the United States in accordance with the requirements of this section, to prevent the plant pests *Helicoverpa armigera*, *Chrysodeixis chalcites*, and *Cornutiplusia circumflexa* from entering the United States.

(1) *Phytosanitary certificate.* The phytosanitary certificate of inspection required by § 319.37–4 that accompanies *Pelargonium* spp. plants from the Canary Islands must contain additional declarations that the plants were produced in an approved Spanish (Canary Island) production site, that the production site is operated by a grower participating in the export program for *Pelargonium* spp. plants established by the national plant protection organization of Spain, and that the plants were grown under conditions specified by APHIS as described in this paragraph § 319.37–5(u) to prevent infestation with *Helicoverpa armigera*, *Chrysodeixis chalcites*, and *Cornutiplusia circumflexa*.

(2) *Grower registration and agreement.* Persons in the Canary Islands who produce *Pelargonium* spp. plants for export to the United States must:

(i) Be registered and approved by the national plant protection organization of Spain; and

(ii) Enter into an agreement with the national plant protection organization of Spain whereby the producer agrees to participate in and follow the export program for *Pelargonium* spp. plants established by the national plant protection organization of Spain.

(3) *Growing requirements.* Growers in the Canary Islands who produce *Pelargonium* spp. plants for export to the United States must meet the following requirements for inclusion in the export program for *Pelargonium* spp. plants established by the national plant protection organization of Spain:

(i) *Pelargonium* spp. plants destined for export to the United States must be produced in a production site devoted solely to production of such plants.

(ii) The production sites in which such plants are produced must be registered with the national plant protection organization of Spain. Such production sites must employ safeguards agreed on by APHIS and the national plant protection organization of Spain, including, but not limited to, prescribed mesh screen size (if the production site is a screenhouse) and

automatically closing doors, to ensure the exclusion of *H. armigera*.

(iii) Each production site in which plants destined for export to the United States are grown must have at least one blacklight trap for 1 year following any of the following events:

(A) The construction of the production site;

(B) The entry of the production site into the approved plants export program;

(C) The replacement of the covering of the production site; or

(D) The detection and repair of a break or tear in the plastic or screening in the production site.

(4) *Inspections*. Inspections undertaken in the export program for *Pelargonium* spp. plants established by the national plant protection organization of Spain will include, but may not be limited to, the following:

(i) The national plant protection organization of Spain will inspect the plants and the production site during the growing season and during packing.

(ii) Packing materials and shipping containers for the plants must be inspected and approved by APHIS to ensure that they do not introduce pests of concern to the plants.

(iii) Either APHIS or the national plant protection organization of Spain will inspect the production site of the plants to ensure that they meet standards of sanitation agreed upon by APHIS and the national plant protection organization of Spain.

(iv) Inspectors from both APHIS and the national plant protection organization of Spain will have access to the production site as necessary to ensure that growers are employing the proper safeguards against infestation of *H. armigera*, *C. chalcites*, and *C. circumflexa* and that those safeguards are correctly implemented.

(v) The national plant protection organization of Spain will provide APHIS with access to the list of registered and approved growers at least annually.

(5) *Ineligibility for participation*. (i) Growers will be ineligible for participation in the export program for *Pelargonium* spp. plants established by the national plant protection organization of Spain and their production sites will lose approved status if:

(A) Live *Cornutiplusia circumflexa* (or any other moth of the family *Noctuidae*) are found in a production site;

(B) Live *Cornutiplusia circumflexa* (or any other moth of the family *Noctuidae*) are found in a shipment of plants; or

(C) Growers violate the requirements set out in this section and by the export program established by the national plant protection organization of Spain.

(ii) A grower may be reinstated, and the grower's production sites may regain approved status, by requesting reapproval and submitting a detailed report describing the corrective actions taken by the grower. Reapproval will only be granted upon concurrence from the national plant protection organization of Spain and APHIS.

(6) *Termination*. APHIS may terminate the entire program if there are repeated violations of procedural or biological requirements.

(7) *Trust fund*. The government of Spain must enter into a trust fund agreement with APHIS before each growing season. The government of Spain or its designated representative is required to pay in advance all estimated costs that APHIS expects to incur through its involvement in overseeing the execution of paragraph (u) of this section. These costs will include administrative expenses incurred in conducting the services enumerated in paragraph (u) of this section and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. The government of Spain or its designated representative is required to deposit a certified or cashier's check with APHIS for the amount of the costs estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the government of Spain or its designated representative to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the services will be completed. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the government of Spain or its designated representative or held on account until needed.

(v) *Special foreign inspection and certification requirements for plants from Israel*. Plants from Israel, except bulbs, dormant perennials, plants *in vitro*, and seeds, may only be imported into the United States in accordance with the regulations in this section, to prevent *Spodoptera littoralis* and other quarantine pests found in Israel from entering the United States.

(1) *Phytosanitary certificate*. The phytosanitary certificate of inspection required by § 319.37–4 that accompanies plants from Israel at the time of arrival at the port of first arrival in the United States must contain additional declarations that the plants were produced in an approved Israeli production site, that the production site is operated by a grower participating in the export program for plants established by the national plant protection organization of Israel, and that the plants were grown under conditions specified by APHIS as described in this paragraph § 319.37–5(v) to prevent infestation or contamination with *Spodoptera littoralis* or other quarantine pests.

(2) *Grower registration and agreement*. Persons in Israel who produce plants for export to the United States must:

(i) Be registered and approved by the national plant protection organization of Israel; and

(ii) Enter into an agreement with the national plant protection organization of Israel whereby the producer agrees to participate in and follow the export program for plants established by the national plant protection organization of Israel.

(3) *Growing requirements*. Growers in Israel who produce plants for export to the United States must meet the following requirements for inclusion in the export program for plants established by the national plant protection organization of Israel:

(i) Plants destined for export to the United States must come from a production site devoted solely to production of such plants.

(ii) The production sites in which such plants are produced must be registered with the national plant protection organization of Israel. These production sites must employ safeguards agreed on by APHIS and the national plant protection organization of Israel to prevent the entry of *S. littoralis*, including, but not limited to, insect-proof screening over openings and double or airlock-type doors. Any rips or tears in the insect-proof screening must be repaired immediately.

(iii) Each production site in which plants destined for export to the United States are grown must have at least one blacklight trap for 1 year following any of the following events:

(A) The construction of the production site;

(B) The entry of the production site into the approved plants export program;

(C) The replacement of the covering of the production site; or

(D) The detection and repair of a break or tear in the plastic or screening in the production site.

(4) *Inspections*. Inspections undertaken in the export program for plants established by the national plant protection organization of Israel will

include, but may not be limited to, the following:

(i) The national plant protection organization of Israel will inspect the plants and the production site weekly to ensure that no quarantine pests are present.

(ii) Plants must be inspected to ensure that they are free of quarantine pests before being allowed into the screened area of the production site.

(iii) The national plant protection organization of Israel will inspect the plants to ensure that no quarantine pests are present prior to export.

(iv) Packing materials and shipping containers for the plants must be inspected and approved by APHIS to ensure that they do not introduce pests of concern to the plants.

(v) Either APHIS or the national plant protection organization of Israel will inspect the production site of the plants to ensure that they meet standards of sanitation approved by APHIS.

(vi) Inspectors from both APHIS and the national plant protection organization of Israel will have access to the production site as necessary to ensure that growers are employing the safeguards and procedures prescribed by the program and that those safeguards and procedures are correctly implemented.

(vii) The national plant protection organization of Israel will provide APHIS with access to the list of registered and approved growers at least annually.

(5) *Ineligibility for participation.* (i) Growers will be ineligible for participation in the export program for plants established by the national plant protection organization of Israel and their production sites will lose approved status if:

(A) Live *Spoeoptera littoralis* are found in a production site;

(B) Live *Spoeoptera littoralis* are found at port inspection two times during the shipping season in shipments from the same grower; or

(C) Growers violate the requirements set out in this section and by the export program established by the national plant protection organization of Israel.

(ii) A grower may be reinstated, and the grower's production sites may regain approved status, by requesting reapproval and submitting a detailed report describing the corrective actions taken by the grower. Reapproval will only be granted upon concurrence from the national plant protection organization of Israel and APHIS.

(6) *Termination.* APHIS may terminate the entire program if there are repeated violations of procedural or biological requirements.

(7) *Trust fund.* The government of Israel must enter into a trust fund agreement with APHIS before each growing season. The government of Israel or its designated representative is required to pay in advance all estimated costs that APHIS expects to incur through its involvement in overseeing the execution of paragraph (v) of this section. These costs will include administrative expenses incurred in conducting the services enumerated in paragraph (v) of this section and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. The government of Israel or its designated representative is required to deposit a certified or cashier's check with APHIS for the amount of the costs estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the government of Israel or its designated representative to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the services will be completed. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the government of Israel or its designated representative or held on account until needed.

* * * * *

8. Section 319.37–6 would be revised to read as follows.

§ 319.37–6 Specific treatment and other requirements.

(a) The following seeds and bulbs may be imported into the United States from designated countries and localities only if they have been treated for the specified pests in accordance with part 305 of this chapter. Seeds and bulbs treated prior to importation outside the United States must be treated in accordance with § 319.37–13(c). An inspector may require treatment within the United States of articles that have been treated prior to importation outside the United States if such treatment is determined to be necessary:

Seed/bulb	Country/locality	Pest(s) for which treatment is required
Allium sativum (garlic) bulbs	Algeria, Armenia, Austria, Azerbaijan, Belarus, Croatia, Czech Republic, Egypt, France, Georgia, Germany, Greece, Hungary, Iran, Israel, Italy, Kazakhstan, Kyrgyzstan, Republic of Moldova, Morocco, Portugal, Serbia and Montenegro, Slovakia, Slovenia, Republic of South Africa, Spain, Switzerland, Syria, Russian Federation, Tajikistan, Turkey, Turkmenistan, Ukraine, and Uzbekistan.	*Brachycerus* spp. and *Dyspessa ulula* (Bkh.).
Castanea and *Quercus* seeds.	All except Canada and Mexico	*Curculio elephas* (Cyllenhal), *C. nucum* L., *Cydia* (*Laspeyresia*) *splendana* Hubner, *Pammene fusciana* L. (*Hemimene juliana* (Curtis)) and other insect pests of chestnut and acorn.
Guizotia abyssinica (niger) seeds.	All (see paragraph (c) of this section)	*Cuscuta* spp.
Hibiscus spp. (hibiscus, rose mallow) seeds and *Abelmoschus* ssp. (okra) seeds.	All except kenaf seed (*Hibiscus cannabinus*) from Mexico to be imported into pink bollworm generally infested areas listed in § 301.52–2a.	*Pectinophora gossypiella* (Saunders) (pink bollworm).
Lathyrus spp. (sweet pea, peavine) seeds, *Lens* spp. (lentil) seeds, and *Vicia* spp. (fava bean, vetch) seeds.	All except North America and Central America	Insects of the family Bruchidae.

Seed/bulb	Country/locality	Pest(s) for which treatment is required
Rutaceae seeds	Afghanistan, Andaman Islands, Argentina, Bangladesh, Brazil, Caroline Islands, Comoro Islands, Fiji Islands, Home Island in Cocos, (Keeling) Islands, Hong Kong, India, Indonesia, Ivory Coast, Japan, Kampuchea, Korea, Madagascar, Malaysia, Mauritius, Mozambique, Myanmar, Nepal, Oman, Pakistan, Papua New Guinea, Paraguay, People's Republic of China, Philippines, Reunion Island, Rodriquez Islands, Ryukyu Islands, Saudi Arabia, Seychelles, Sri Lanka, Taiwan, Thailand, Thursday Island, United Arab Emirates, Uruguay, Vietnam, Yemen (Sanaa), and Zaire.	*Xanthomonas axonopodis,* pv. *citri* (citrus canker).

(b) Seeds and bulbs that are treated within the United States must be treated at the time of importation into the United States.

(c) Seeds of *Guizotia abyssinica* (niger seed) that are treated prior to shipment to the United States at a facility that is approved by APHIS [8] and that operates in compliance with a written agreement between the treatment facility owner and the plant protection service of the exporting country, in which the treatment facility owner agrees to comply with the provisions of this section and allow inspectors and representatives of the plant protection service of the exporting country access to the treatment facility as necessary to monitor compliance with the regulations. Treatments must be certified in accordance with the conditions described in § 319.37–13(c).

(d) Shipments of kenaf (*Hibiscus cannabinus*) seed from Mexico that are imported into pink bollworm generally infested areas listed in § 301.52–2a shall be subject to inspection, and shall immediately, upon release, be subject to the domestic pink bollworm quarantine regulations in §§ 301.52 through 301.52–10, ''Subpart-Pink Bollworm,'' of this chapter.

9. Section 319.37–7 would be amended as follows:

a. In the table in paragraph (a)(3), by revising the entries for ''*Fragaria* spp.'', ''*Jasminum* spp.'', and ''*Sorbus* spp.'' to read as set forth below.

b. By revising paragraph (d)(7)(ii) to read as set forth below.

c. By removing paragraph (g).

§ 319.37–7 Postentry quarantine.

(a) * * *

(3) * * *

Restricted articles (excluding seeds)	Foreign country(ies) or locality(ies) from which imported
* *	* * * * *
Fragaria spp. (strawberry)	All except Armenia, Australia, Austria, Azerbaijan, Belarus, Canada, Czech Republic, Estonia, France, Georgia, Great Britain, Italy, Japan, Latvia, Lebanon, Lithuania, Kazakhstan, Kyrgyzstan, Republic of Moldova, the Netherlands, New Zealand, Northern Ireland, Republic of Ireland, Russian Federation, Slovakia, Switzerland, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.
* *	* * * * *
Jasminum spp. (jasmine)	All except Canada, Belgium, Germany, Great Britain, India, and the Philippines.
* *	* * * * *
Sorbus spp. (mountain ash)	All except Canada, Czech Republic, Denmark, Germany, and Slovakia.
* *	* * * * *

* * * * *

(d) * * *

(7) * * *

(ii) To grow the article or increase therefrom, if an article of *Chrysanthemum* spp., *Dendranthema* spp, *Leucanthemella serotina,* and *Nipponanthemum nipponicum,* or *Dianthus* spp. (carnation, sweet-william), only in a greenhouse or other enclosed building, and to comply with the above conditions for a period of 2 months after importation for an article of *Chrysanthemum* spp., *Dendranthema* spp, *Leucanthemella serotina,* and *Nipponanthemum nipponicum* that is grown in accordance with an APHIS-approved best management practices program, for a period of 6 months after importation for an article of *Chrysanthemum* spp., *Dendranthema* spp, *Leucanthemella serotina,* and *Nipponanthemum nipponicum* that is not grown in accordance with an APHIS-approved best management practices program, for a period of 1 year after importation for an article of *Dianthus* spp. (carnation, sweet-william), and for a period of 9 months after importation for an article of *Hydrangea* spp.

* * * * *

10. Section 319.37–8 would be amended as follows:

a. By revising paragraph (b) to read as set forth below.

b. In paragraph (c), by removing the words ''transparent or translucent''.

c. In paragraph (d), by removing the words ''or coconut fiber'' and adding the words ''coconut fiber, unused clay pots, or new wooden baskets'' in their place.

§ 319.37–8 Growing media.

* * * * *

(b)(1) A restricted article from Canada may be imported in any growing medium, except as restricted in paragraph (b)(2) of this section.

(2) A restricted article from Newfoundland or from that portion of the Municipality of Central Saanich in

[8] Criteria for the approval of heat treatment facilities are contained in part 305 of this chapter.

the Province of British Columbia east of the West Saanich Road may only be imported in an approved growing medium if the phytosanitary certificate accompanying it contains an additional declaration that the restricted article was produced in a production site approved by the national plant protection organization of Canada as capable of isolating the plants from infestation by potato cyst nematodes (*Globodera rostochiensis* (Woll.) Behrens and *G. pallida*) and that the restricted article was isolated from potato cyst nematode infestation throughout its production.

* * * * *

§ 319.37–10 [Amended]

11. In § 319.37–10, paragraph (b) introductory text would be amended by removing the word ''listed'' and adding the word ''identified'' in its place.

12. Section 319.37–14 would be revised to read as follows.

§ 319.37–14 Ports of entry.

Any restricted article required to be imported under a written permit pursuant to § 319.37–3(a)(1) through (6) of this subpart, if not precleared, may be imported or offered for importation only at a Federal plant inspection station listed below. Ports of entry through which restricted articles must pass before arriving at these Federal plant inspection stations are listed in the second column. Any other restricted article that is not required to be imported under a written permit pursuant to § 319.37–3(a)(1) through (6) of this subpart may be imported or offered for importation at any Customs designated port of entry indicated in 19 CFR 101.3(b)(1). Exceptions may be listed in § 330.104 of this chapter. Articles that are required to be imported under a written permit that are also precleared in the country of export are not required to enter at an inspection station and may enter through any Customs port of entry. Exceptions may be listed in § 330.104 of this chapter.

LIST OF FEDERAL PLANT INSPECTION STATIONS

State	Port of entry	Federal plant inspection station.
Arizona	Nogales	Plant Inspection Station, 9 North Grand Avenue, Room 120, Nogales, AZ 85621.
California	Long Beach	Los Angeles Inspection Station, 11840 S. La Cienega Blvd., Hawthorne, CA 90250.
	Los Angeles	
	San Pedro	
	San Diego	Plant Inspection Station, 9777 Via de la Amistad, Room 140, San Diego, CA 92154.
	Oakland	Plant Inspection Station, 389 Oyster Point Blvd., Suite 2, South San Francisco, CA 94080.
	San Francisco	
Florida	Miami (Note: Restricted articles may be moved from Fort Lauderdale to Miami under U.S. Customs bond).	Plant Inspection Station, 3500 NW. 62nd Avenue, Miami, FL 33122.
	Orlando	Plant Inspection Station, 9317 Tradeport Drive, Orlando, FL 32827.
Georgia	Atlanta	Hartsfield Perishable Complex, 1270 Woolman Place, Atlanta, GA 30354.
Guam	Agana	P.O. Box 8769, Tamuning, GU 96931.
Hawaii	Honolulu (Airport)	Honolulu Inspection Station, Honolulu International Airport, 300 Rodgers Blvd., #57, Honolulu, HI 96819–1897.
Louisiana	New Orleans	Plant Inspection Station, 900 East Airline Service Road A, Kenner, LA 70063.
Maryland	Baltimore	(Niger seed may be imported into the Port of Baltimore and treated at a local treatment facility).
New Jersey	Elizabeth	Frances Krim Memorial Inspection Station, 2500 Brunswick Avenue, Building G, Linden, NJ 07036.
	New York (Maritime)	
	Newark	
New York	Jamaica (JFK)	Plant Inspection Station, 230–59 International Airport Centers Boulevard, Building C, Suite 100, Room 109, Jamaica, NY 11413.
Puerto Rico	San Juan	Plant Inspection Station, 150 Central Sector, Building C–2, Warehouse 3, Carolina, PR 00979.
Texas	Houston	Plant Inspection Station, 19581 Lee Road, Humble, TX 77338.
	Los Indios	Plant Inspection Station, P.O. Drawer Box 393, 100 Los Indios Boulevard, Los Indios, TX 78567.
Washington	Seattle	Plant Inspection Station, 16215 Air Cargo Road, Suite 112, Seattle, WA 98158–1301.

§ 319.59–2 [Amended]

13. Section 319.59–2 would be amended as follows:

a. In paragraph (b)(1), by removing the words ''Plant Germplasm Quarantine Center, Building 320'' and adding the words ''National Plant Germplasm Inspection Station, Building 580'' in their place; and by removing the words ''at any port of entry with an asterisk listed in § 319.37–14(b)'' and adding the words ''through any Federal plant inspection station listed in § 319.37–14'' in their place.

b. In paragraph (b)(2), by removing the words ''Plant Germplasm Quarantine Center'' and adding the words ''National Plant Germplasm Inspection Station'' in their place.

§ 319.75 [Amended]

14. In § 319.75, paragraph (c)(2) would be amended by removing the words ''Plant Germplasm Quarantine Center, Building 320'' and adding the words ''National Plant Germplasm

Inspection Station, Building 580'' in their place; and by removing the words ''at a port of entry designated by an asterisk in § 319.37–14;'' and adding the words ''through any Federal plant inspection station listed in § 319.37–14;'' in their place.

§ 319.75–8 [Amended]

15. § 319.75–8 would be amended by removing the word ''listed'' and adding the word ''identified'' in its place.

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

16. The authority citation for part 330 would continue 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; 7 CFR 2.22, 2.80, and 371.3.

17. Section 330.104 would be amended by revising all of the text after the first sentence to read as follows:

§ 330.104 Ports of entry.

• * * * The ports of entry shall be those named in 19 CFR 101.3(b)(1), except as otherwise provided by administrative instructions or by permits issued in accordance with this part, and except those ports of entry listed below.

LIST OF EXCEPTIONS TO CUSTOMS DESIGNATED PORTS OF ENTRY

State	Port of entry
[Reserved]	[Reserved]

PART 340—INTRODUCTION OF ORGANISMS AND PRODUCTS ALTERED OR PRODUCED THROUGH GENETIC ENGINEERING WHICH ARE PLANT PESTS OR WHICH THERE IS REASON TO BELIEVE ARE PLANT PESTS

18. The authority citation for part 340 would continue to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

§ 340.4 [Amended]

19. In § 340.4, paragraph (f)(11)(i) would be amended by removing the words ''at a port of entry which is designated by an asterisk in 7 CFR 319.37–14(b);'' and adding the words ''through any Federal plant inspection station listed in § 319.37–14 of this chapter;'' in their place.

§ 340.7 [Amended]

20. In § 340.7, paragraph (b) introductory text would be amended by removing the words ''at a port of entry designated by an asterisk in 7 CFR 319.37–14(b)'' and adding the words ''through any Federal plant inspection station listed in § 319.37–14 of this chapter'' in their place.

Done in Washington, DC, this 8th day of December 2005.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–24031 Filed 12–14–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23314; Directorate Identifier 2005–NM–189–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318–100 and A319–100 Series Airplanes, A320–111 Airplanes, A320–200 Series Airplanes, and A321–100 and A321–200 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A318–100 and A319–100 series airplanes, A320–111 airplanes, A320–200 series airplanes, and A321–100 and A321–200 series airplanes. This proposed AD would require operators to review the airplane's maintenance records to determine the part numbers of the magnetic fuel level indicators (MFLI) of the fuel tank, and related investigative and corrective actions if necessary. This proposed AD results from several in-service incidents of wear and detachment of the top-stops from the MFLI. Such detachment allows the top-stop to move around the fuel tank, and the top-stop could come into contact or in close proximity with a gauging probe, resulting in compromise of the air gap between the probe and the structure and creating a potential ignition source. We are proposing this AD to prevent an ignition source in the fuel tank in the event of a lightning strike, which could result in a fire or explosion.

DATES: We must receive comments on this proposed AD by January 17, 2006.

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

• DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.

• Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.

• Fax: (202) 493–2251.

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2005–23314; Directorate Identifier 2005–NM–189–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all

comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

The Direction Génrale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A318–100 and A319–100 series airplanes, A320–111 airplanes, A320–200 series airplanes, and A321–100 and A321–200 series airplanes. The DGAC advises that several in-service incidents of wear and detachment of the top-stops from the magnetic fuel level indicators (MFLI) have occurred. Analysis revealed that the affected top-stop is made of aluminum and retained with an S-shaped lock-wire that degrades over time. Detachment of the top-stop allows it to move around the fuel tank, and the top-stop could come into contact, or in close proximity, with a gauging probe, resulting in compromise of the air gap between the probe and the structure, and creating a potential ignition source. These conditions, if not corrected, could result in an ignition source in the fuel tank in the event of a lightning strike, which could result in a fire or explosion.

Relevant Service Information

Airbus has issued Service Bulletin A320–28–1138, dated March 18, 2005. The service bulletin describes procedures for reviewing the airplane's documentation to determine the part number (P/N) of the MFLI of the fuel tank, and related investigative and corrective actions if necessary. If the P/N for each MFLI cannot be determined from a records review, the related investigative actions include accomplishing a visual inspection of the internal bore of each MFLI using an endoscope to determine the type of MFLI that is installed. If any aluminum MFLI with an S-shaped lock-wire standard is installed, or if a MFLI with an old P/N is installed, the corrective action includes replacing the MFLI with a new, improved MFLI. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2005–108, dated July 6, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Difference Between the Proposed AD and French Airworthiness Directive

The applicability of the French airworthiness directive includes airplanes that are equipped with certain MFLI part numbers. However, we have not included those airplanes in the applicability of this proposed AD; rather, this proposed AD includes a requirement to review the airplane's maintenance records to determine if any MFLI of the fuel tank with a P/N identified in the old P/N column of the table in paragraph 1.L, ''Interchangeability/Mixability,'' of the referenced service bulletin is installed. Those P/Ns are the same as the P/Ns identified in the applicability of the French airworthiness directive. This requirement would ensure that the actions specified in the service bulletin and required by this proposed AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this proposed AD unless an alternative method of compliance is approved. This difference has been coordinated with the DGAC.

Costs of Compliance

This proposed AD would affect about 621 airplanes of U.S. registry. The proposed records review would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $40,365, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2005–23314; Directorate Identifier 2005–NM–189–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 17, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318–100 and A319–100 series airplanes; A320–111 airplanes; A320–200 series airplanes; and A321–100 and A321–200 series airplanes; certificated in any category; except airplanes on which Airbus Modification 27496 has been installed in production.

Unsafe Condition

(d) This AD results from several in-service incidents of wear and detachment of top-stops from the magnetic fuel level indicators (MFLI). Such detachment allows the top-stop to move around the fuel tank, and the top-stop could come into contact or in close proximity with a gauging probe, resulting in compromise of the air gap between the probe and the structure and creating a potential ignition source. We are issuing this AD to prevent an ignition source in the fuel tank in the event of a lightning strike, which could result in a fire or explosion.

Compliance

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

Review Airplane Maintenance Records/ Investigative and Corrective Actions

(f) Within 65 months or 6,500 flight hours after the effective date of this AD, whichever is first: Review the airplane's maintenance records to determine the part number (P/N) of each MFLI of the fuel tank in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1138, dated March 18, 2005. If the P/N cannot be identified, or the P/N is identified in the ''old P/N'' column of the table in paragraph 1.L., ''Interchangeability/Mixability,'' of the service bulletin, before further flight, do the applicable related investigative and corrective actions by accomplishing all of the actions in accordance with the Accomplishment Instructions of the service bulletin.

Parts Installation

(g) As of the effective date of this AD, no person may install on any airplane any MFLI with a P/N identified in the ''old P/N'' column of the table in paragraph 1.L., ''Interchangeability/Mixability,'' of Airbus Service Bulletin A320–28–1138, dated March 18, 2005.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(i) French airworthiness directive F–2005–108, dated July 6, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on December 8, 2005.

Michael Zielinski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24051 Filed 12–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23313; Directorate Identifier 2005–NM–111–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727, 727C, 727–100, and 727–100C Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 727, 727C, 727–100, and 727–100C series airplanes. This proposed AD would require repetitive inspections for cracks in the body skin and bear strap at the upper and lower hinge cutouts of the mid-cabin galley doorway, along the upper fastener row of the stringer 14R lap splice, and in the doorstop fitting adjacent to the upper hinge cutout; and corrective action if necessary. This proposed AD also provides for optional terminating action for certain inspections. This proposed AD results from reports of skin and bear strap cracking at the upper and lower hinge cutout and along the upper fastener row of the stringer 14R lap splice, and cracking in the doorstop fitting adjacent to the upper hinge cutout. There are also reports of cracking on airplanes previously modified to prevent such cracking. We are proposing this AD to find and fix fatigue cracking of the fuselage, which could result in reduced structural integrity and consequent rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by January 30, 2006.

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

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

400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Daniel F. Kutz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6456; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number ''FAA–2005–23313; Directorate Identifier 2005–NM–111–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

We have received a report indicating that a 0.73 inch long skin crack was found at the upper corner of the upper hinge cutout of the mid-cabin galley doorway on a Model 727 series airplane. The crack was similar to cracking found and fixed previously on other Model 727 series airplanes. Further inspections revealed a 1 inch crack in the bear strap, and cracks in the doorstop fitting adjacent to the upper hinge cutout. Investigation of the Model 727 airplane history revealed reports of 15 skin cracks having lengths up to 2 inches on 12 airplanes with between 23,400 and 54,600 flight cycles. Of the reported skin cracks, there were three reports of associated bear strap crack indications on three airplanes. One of the airplanes also had a cracked door stop fitting adjacent to the upper hinge cutout. Five cracks on five of the airplanes were located near the lower hinge cutout in the upper row of fasteners of the skin lap joint at stringer 14R. Some of the cracks were found on airplanes that were modified in service by increasing the radius of the corners of the body skin at the hinge cutouts, and installing doublers at the high cutouts; and airplanes on which the equivalent modification was done in production. These modifications did not prevent the cracking. This cracking, if not corrected, could result in reduced structural integrity and consequent rapid decompression of the airplane.

Other Relevant Rulemaking

On January 16, 1990, the FAA issued AD 90–06–09, amendment 39–6488 (55 FR 8370, March 7, 1990), applicable to certain Boeing Model 727 series airplanes, which requires the incorporation of certain structural modifications specified by Boeing Document No. D6–54860, Revision C, dated December 11, 1989, ''Aging Airplane Service Bulletin Structural Modification Program—Model 727.'' That Boeing document references numerous Boeing service bulletins that specify various modification actions that are mandated by AD 90–06–09. The actions required by that AD are intended to prevent a degradation in the structural capabilities of the affected airplanes, which could result in structural failure. That action also reflects the FAA's decision that long-term continued operational safety would be ensured by actual modification of the airframe rather than repetitive inspection. One of the structural modifications in that AD is of the body skin of the mid-galley door hinge cutouts done in accordance with Boeing Service Bulletin 727–53–0054, Revision 1, dated November 16, 1989. Service Bulletin 727–53–0054 describes procedures for inspection of the forward upper and lower corners at the hinge cutouts of the mid-cabin galley doorway for cracks in the body skin, a modification to the corners of the hinge cutouts, and installation of doublers at the hinge cutouts of the mid-cabin galley doorway. (Service Bulletin 727–53–0054 is referenced in Boeing Document No. D6–54860, Revision C, as one source of service information for accomplishing the actions.)

On May 12, 1998, we issued AD 98–11–03, amendment 39–10530 (63 FR 27455, May 19, 1998), applicable to all Boeing Model 727 series airplanes. (A correction of that AD was published in the **Federal Register** as AD 98–11–03 R1, amendment 39–10983, on December 30, 1998 (64 FR 989, January 7, 1999).) That AD requires that the FAA-approved maintenance inspection program be revised to include inspections of Structurally Significant Items (SSI) based on damage tolerance analysis. That AD also allows operators not to change their programs if they determine that the existing inspections are effective for the new or affected SSI.

On April 19, 2000, we issued AD 2000–08–19, amendment 39–11705 (65 FR 25278, May 1, 2000), applicable to certain Boeing Model 727 and 727C series airplanes. That AD requires one-time inspections of the exterior body skin located at the forward corners of the mid-galley door hinge cutouts to detect cracking, and corrective actions if necessary. That AD also requires modification of the body skin of the mid-galley door hinge cutouts. Boeing Service Bulletin 727–53–0054, Revision 1, dated November 16, 1989, was referenced in that AD as the appropriate source of service information for accomplishing the required actions. The service bulletin describes procedures for inspection of the forward upper and lower corners at the hinge cutouts of the mid-cabin galley doorway for cracks in the body skin, a modification to the corners of the hinge cutouts, and installation of doublers at the hinge cutouts of the mid-cabin galley doorway.

Since issuance of AD 90–06–09 and AD 2000–08–19, we have determined that the actions required by those ADs pertaining to the mid-galley door hinge cutouts are not adequate to prevent cracking in this area. The subject cracking of the bear strap, door stop fitting, and skin lap joint area is bigger than the area specified in the actions required by AD 90–06–09 and AD 2000–08–19; therefore, the cracks may have been undetected at the time a modification or repair was done. We have determined that additional work is necessary for airplanes on which a

modification or repair required by AD 90–06–09 or AD 2000–08–19 was done without additional inspections recommended in the service bulletin referenced in this proposed AD.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 727–53A0228, dated March 24, 2005. The service bulletin describes procedures for repetitive inspections for any cracks, including stop-drilled, trimmed-out, or repaired cracks, in the body skin and bear strap at the upper and lower hinge cutouts of the mid-cabin galley doorway; along the upper fastener row of the stringer 14R lap splice; and in the doorstop fitting adjacent to the upper hinge cutout; and corrective action if necessary. The types of inspections are detailed and special detailed inspections'which include surface high frequency eddy current (HFEC), open-hole HFEC, and fluorescent dye penetrant inspections. If a modification or repair required by AD 90–06–09 or AD 2000–08–19 was done, the service bulletin describes procedures for removing the doublers before accomplishing the inspections. Corrective action includes replacing any cracked doorstop fitting with a new fitting, and repairing cracks in the skin or bear strap per repair instructions from Boeing. The service bulletin also specifies that replacement of a door stop fitting with a new door stop fitting made of 7075 material eliminates the need to repeat the inspection of that stop fitting. Door stop fittings having part number 65–23674–7 are made of 7075 material and do not need to be inspected. The service bulletin also recommends providing the details of any crack findings to Boeing for repair instructions.

The compliance times for the inspections specified in Table 1 of paragraph 1.E. ''Compliance'' of the service bulletin are to be accomplished before the accumulation of 20,000 total flight cycles or within 2,000 flight cycles after the effective date of the AD, whichever is later; the repetitive interval is every 6,000 flight cycles.

FAA's Determination and Requirements of the Proposed AD

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

Difference Between the Proposed AD and the Service Bulletin

Paragraph 1.F. of the service bulletin specifies, ''Any cracks found must be repaired, before further flight, in accordance with a method approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane, approved by a Boeing Company Authorized Representative who has been authorized by the Manager, Seattle ACO, to make such findings.'' However, the Accomplishment Instructions of the alert service bulletin specify to contact the manufacturer for instructions on how to repair certain conditions. Therefore, we provide the following clarification: Where the Accomplishment Instructions of the alert service bulletin specify to provide the details of any crack findings to Boeing for repair instructions, this proposed AD would require repairing those conditions in one of the following ways:

- Using a method we approve; or
- Using data that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Interim Action

We consider this proposed AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this proposed AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Costs of Compliance

There are about 232 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 123 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Airplane group	Work hours	Average hourly labor rate	Cost per airplane
Group 1, Configuration 1	10	$65	$650
Group 1, Configuration 2	10	65	650
Group 1, Configuration 3	9	65	585
Group 2	9	65	585

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2005–23313; Directorate Identifier 2005–NM–111–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 30, 2006.

Affected ADs

(b) This AD is related to AD 98–11–03, amendment 39–10530, as corrected by AD 98–11–03 R1, amendment 39–10983.

Applicability

(c) This AD applies to all Boeing Model 727, 727C, 727–100 and 727–100C series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports of skin and bear strap cracking at the upper and lower hinge cutout and along the upper fastener row of the stringer 14R lap splice, and cracking in the doorstop fitting adjacent to the upper hinge cutout. There are also reports of cracking on airplanes previously modified to prevent such cracking. We are issuing this AD to find and fix fatigue cracking of the fuselage, which could result in reduced structural integrity and consequent rapid decompression of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term ''alert service bulletin,'' as used in this AD, means Boeing Alert Service Bulletin 727–53A0228, dated March 24, 2005.

Repetitive Inspections

(g) Accomplish the applicable inspections for any cracks (including stop-drilled, trimmed-out, or repaired cracks) in the body skin and bear strap at the upper and lower hinge cutouts of the mid-cabin galley doorway, along the upper fastener row of the stringer 14R lap splice, and in the doorstop fitting adjacent to the upper hinge cutout, as specified in Table 1 of paragraph 1.E. ''Compliance'' of the alert service bulletin. Accomplish the inspections at the applicable compliance time specified in Table 1 of paragraph 1.E.; except, where Table 1 specifies a compliance time relative to the date of the release of the alert service bulletin, this AD requires compliance relative to the effective date of this AD. Accomplish the inspections by doing all the applicable actions specified in the Accomplishment Instructions of the alert service bulletin. Inspections of door stop fittings made of 7075 material having part number (P/N) 65–23674–7 are not required. Repeat the applicable inspection at the applicable repeat interval specified in Table 1 of paragraph 1.E. of the alert service bulletin.

Corrective Action

(h) If any cracking is found during any inspection required by paragraph (g) of this AD, repair the cracking and repeat the inspection at the applicable compliance time specified in Table 1 of paragraph 1.E. ''Compliance'' of the alert service bulletin. Do the repair by doing all the applicable actions specified in the Accomplishment Instructions of the alert service bulletin. Where the alert service bulletin specifies to report cracking to Boeing for repair instructions: Before further flight, repair any cracking according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or using a method approved in accordance with paragraph (j)(3) of this AD.

Optional Terminating Action

(i) Replacement of the doorstop fitting with a fitting made of 7075 material having P/N 65–23674–7, in accordance with the Accomplishment Instructions of the alert service bulletin, terminates the repetitive inspections of that fitting, as required by paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) The inspection methods specified in Figures 9 through 12 of the alert service bulletin, as required by paragraph (g) of this AD, at the thresholds and intervals specified in paragraph (g), are approved as a method of compliance (MOC) to paragraph (b) of AD 98–11–03 and 98–11–03 R1, for the inspections of Structurally Significant Item F–16A, Supplemental Structural Inspection Document D6–48040–1, affected by the repair or modification. The MOC applies only to the areas inspected in accordance with Boeing Alert Service Bulletin 727–53A0228, dated March 24, 2005. All provisions of AD 98–11–03 R1 that are not specifically referenced in this paragraph remain fully applicable and must be complied with.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on December 8, 2005.

Michael Zielinski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24052 Filed 12–14–05; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AC25

Commodity Pool Operator Electronic Filing of Annual Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to amend Commission regulations to require that commodity pool annual financial reports submitted by commodity pool operators (''CPOs'') to the National Futures Association (''NFA'') be filed electronically.

Commodity pool annual reports filed with a registered futures association (currently, the NFA is the sole registered futures association) must contain a manually signed oath or affirmation under Commission regulations and no provision exists for electronic filing of annual reports with NFA. The NFA has recently petitioned the Commission to amend its regulations to require mandatory electronic filing of commodity pool annual reports. The Commission has considered the NFA petition and is hereby proposing to amend Commission regulations: (i) To require CPOs to file a commodity pool annual report with NFA electronically,

with the required oath or affirmation to be made through compliance with NFA's electronic filing procedures; (ii) to require CPOs to maintain for five years a manually signed copy of each annual report and to maintain records of how certain key financial balances submitted to NFA were compiled from the annual report; (iii) to eliminate the requirement that the annual report filed with NFA be manually signed.

Further, the Commission is proposing additional amendments to clarify certain aspects of the Commission's regulations applicable to CPOs with respect to financial reporting, Specifically, the Commission is proposing amendments that would: explicitly state that commodity pool monthly and/or quarterly account statements distributed to participants must be prepared in accordance with generally accepted accounting principles; clarify that COPs must file a notification of a change in a public accountant for a commodity pool with the Commission and with NFA; clarify that a reference to ''segregation'' with respect to a statement required to be made in an accountant's letter refers to the prohibition on commingling of funds of a commodity pool with the assets of any other person; and require that notifications concerning CPOs' election of fiscal years for commodity pools other than the calendar year or changes in fiscal year be filed solely with NFA and not the Commission.

Annual reports to pool participants may continue to be provided as they have been previously, either through hard-copy distribution via postal mail or electronically if the pool participant consents thereto.

DATES: Comments must be received on or before January 17, 2005.

ADDRESSES: You may submit comments, identified by RIN 3038–AC25, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Following the instructions for submitting comments.
- E-mail: *secretary@cftc.gov.* Include ''Proposed Amendment to Rule 4.22'' in the subject line of the message.
- Fax: (202) 418–5521.
- Mail: Sent to Jean A Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.
- Courier: Same as Mail above.

All comments received will be posted without change to *http://www.cftc.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Thomas J. Smith, Deputy Director and Chief Accountant, at (202) 418–5430 or Jennifer C.P. Bauer, Special Counsel, at (202) 418–5472, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic mail: (*tsmith@cftc.gov*) or (*jbauer@cftc,gov*).

SUPPLEMENTARY INFORMATION:

I. Background

Regulation 4.22(c) requires a CPO to file with NFA and to provide to each participant an annual financial report, certified by an independent public accountant, for each commodity pool that it operates within 90 days of the end of the pool's fiscal year to the permanent cessation of trading.[1] Also, Regulation 4.7(b)(3) requires a COP that has claimed an exemption from certain regulatory requirements pursuant to Rule 4.7 to file with NFA and to distribute to commodity pool participants an unaudited annual financial report in lieu of an audited annual financial report.[2] Currently a CPO files such annual reports with NFA in paper form, unless the CPO has voluntarily elected to file the annual reports electronically pursuant to NFA's pilot program for electronic filing, which is discussed herein.

Under Commission Rule 4.22(h), each annual financial report filed with NFA must contain a manually signed oath or affirmation that, to the best of the knowledge or belief of the individual making the oath or affirmation, the information contained in the annual report is accurate and compete. A facsimile of a manual signature is permitted for annual reports[3] delivered to participants, and therefore CPOs, absent the participants' objection, may deliver annual reports to pool participants by means of electronic media.[4] However, no regulatory provision currently permits the electronic filing of the annual report with NFA.

II. NFA Pilot Program for CPO Electronic Filing

Beginning with reports filed for the year ended December 31, 2004, the NFA implemented a pilot program permitting CPOs to voluntarily elect to file commodity pool annual reports through the use of an electronic filing system, the ''EasyFile'' system, accessed from the NFA's Web site.[5] The NFA pilot program required that the complete annual report for commodity pools, including the public accountant's opinion contained in certified statements, be submitted to NFA in the Portable Document Format (''PDF'') file format. In addition to the electronic submission of the document in a PDF file format, participating CPOs were required to directly enter certain key financial statement balances or aggregated balances from the commodity pools' annual reports into the NFA's EasyFile system. NFA requested that the Commission provide CPOs participating in the pilot program with relief from the requirement of Regulation 4.22(h) that the annual report filed with NFA include a manually signed oath or affirmation, as NFA implemented an electronic version of the oath or affirmation applicable to both the document submitted in PDF file format and the key financial statement balances directly entered into the EasyFile system. The Commission's Division of Clearing and Intermediary Oversight issued exemptive relief in January 2005 to CPOs participating in the pilot program from the requirement that their pools' annual reports submitted to NFA be manually signed under Rule 4.22(j).[6] On August 26, 2005, the NFA petitioned the Commission to formally amend Regulations 4.22 and 4.7 to eliminate the requirement that CPOs file manually signed pool annual reports with NFA, and to further require COPs to file such annual reports with NFA electronically using the EasyFile system implemented in the pilot program.

[1] The regulations of the Commission cited in this release may be found at 17 CFR Ch. I (2005).

[2] CPOs operating pools offered solely to qualified eligible participants (''QEPs'') pursuant to Regulation 4.7 may claim relief from the certification requirement of Regulation 4.22(d) with respect to the exempt pools' financial statements. *See* Regulation 4.7(b)(3).

[3] In addition to annual reports, Commission Regulation 4.22 addresses account statements provided to participants by CPOs. However, the amendments proposed herein do not substantively change requirements for delivery to participants of account statements. Therefore, throughout this release, references will only be made to annual reports despite the applicability of certain regulations to account statements as well.

[4] Under the current rule, if the CPO maintains the annual report with the manually signed oath or affirmation and the oath or affirmation on the annual report filed with NFA is manually signed, the oath or affirmation on an annual report distributed to participants may contain a facsimile of the manual signature thereby permitting electronic distribution.

[5] NFA initially adopted the EasyFile electronic filing system for financial reporting by introducing brokers (''IBs'') in 2004. The Commission approved NFA's rules adopting EasyFile for IBs on June 28, 2004.

[6] CFTC Letter No. 05–01 may be accessed at *http://www.cftc.gov/tm/letters/05letters/tm05-01.htm.*

III. NFA's ''EasyFile'' Electronic Filing System

NFA's electronic filing system for commodity pool annual reports has three components. First, the CPO must submit a PDF file version of the full annual report, including the balance sheet, income statement, schedule of investments, and the independent auditor's opinion, if applicable. Second, the CPO must directly enter approximately 30 key financial balances into a standardized form accessed through the NFA's Web site. These balances are obtained directly or aggregated from the commodity pool's balance sheet, income statement and statement of changes in net asset value included in the commodity pool's annual report. NFA's Web site includes on-line instructions for the amounts to include in the individual fields in the electronic schedule, and the system also enforces certain edit and validations checks to ensure data quality.[7]

Third, when the CPO submits the electronic filing, NFA's system prompts the submitter to read and to indicate agreement to an electronic oath or affirmation. The submitter will have already securely accessed NFA's system through the input of a personal identification number (''PIN'').[8] This oath or affirmation is made with respect to the PDF file of the annual report and the financial data entered into the NFA's database of key financial statement balances through the NFA Web site. The user interface and system security for NFA's CPO electronic filing system are patterned after NFA's existing EasyFile system for IBs' unaudited financial reports. Similar to EasyFile for IBs, the CPO's Security Manager can establish users and assign them abilities to enter data and/or submit the report and data in the NFA electronic filing system.[9] A user such as the CPO's certified public accountant (''CPA'') may be provided with the ability to *enter* the key financial statement balances into NFA's database and save the form and report for later submission. However, only persons duly authorized to bind the pool operator in accordance with Rule 4.22(h)(3) may *submit* the data by entering a PIN and making the required oath or affirmation. The CPO is responsible for ensuring that only persons who are duly authorized to bind the CPO, in accordance with Rule 4.22(h)(3), are granted the ability to submit the financial statements and key financial statement balances to NFA. The electronic version of the oath or affirmation will appear in dialog boxes when reports or data are submitted, and completion of the submission will require an affirmative acceptance of the oath or affirmation by a user who has accessed the system with a secure PIN number and has been granted permission to submit reports. The Security Manager for each CPO will have the ability to access the firm's ''Security'' tab within the electronic filing system to administer users and permissions. The Security Manager will be the person at the CPO responsible for ensuring that only duly authorized persons who may bind the CPO have system permissions to submit the annual reports and data.

CPOs who distribute reports to participants through electronic media are required to maintain a manually signed copy of the oath or affirmation in their records, as specified currently in Rule 4.22(j)(2), and to provide such oath or affirmation to NFA upon request. In the amendments as proposed, CPOs will be required to maintain the manually signed oath or affirmation for all reports regardless of whether the CPOs use electronic media for distribution to participants. In addition, CPOs will be required to maintain records indicating where the key financial statement balances directly entered into NFA's database appear in the commodity pool's annual report or how such balances are aggregated from amounts appearing in the pool's annual report.

The key financial statement balances field electronically through the pilot program include all the data elements that NFA staff currently manually enter into the FACTS 2000 database from the information contained in hard copy annual reports, as well as several data elements that NFA staff added after consultation with members of the commodity pool industry, CPAs that serve the commodity pool industry, and Commission staff. NFA's FACTS 2000 database serves as the primary means by which NFA and Commission staff access commodity pool financial information.

IV. Benefits of Electronic Filing of Pool Annual Reports

Mandatory electronic filing of commodity pool annual reports is anticipated to benefit both the Commission and NFA by increasing the quality of the financial data from commodity pool annual reports that will be collected in FACTS 2000 and be available to the Commission. Direct data entry by the CPO or its CPA, who are most familiar with the information being submitted, and the system-enforced edit and validation checks, should enhance the integrity and quality of data collected. Also, the prepared guidance for CPO members and their CPAs will promote more uniformity in the classification of the key data elements. Further, NFA reported that approximately 15 percent of the filed commodity pool annual reports for the year ended December 31, 2004 were filed electronically through participation in the pilot program and that the electronic filing process is anticipated to be relatively simple and cost effective for CPOs, requiring only Internet access and a PDF file of the annual report.

V. Proposed Amendment

Regulation 4.22(c) requires that a registered CPO file with NFA an annual report for each pool that it operates within 90 days of the end of the pool's fiscal year or the permanent cessation of trading. The Commission is proposing to amend Regulation 4.22(c) and Regulation 4.7(b)(3) to specifically require that the commodity pool annual reports be submitted to NFA electronically through NFA's established electronic filing procedures. Further, the Commission is proposing to amend Regulation 4.22(h), pursuant to which each such report, including those provided under Rule 4.7 and Rule 4.12(b), must contain an oath or affirmation that, to the best of the knowledge and belief of the person making the oath or affirmation, the information contained in the document is accurate and complete. The amendment will require the oath or affirmation on annual reports filed with NFA to be made through the use of electronic filing procedures and will continue to permit the oath or affirmation on copies distributed to participants to contain facsimile signatures so long as a manually signed copy is maintained by the CPO. The Commission is also proposing to delete Rule 4.22(j) and add a provision to Rule 4.23(a) to require CPOs to maintain in their books and records a manually signed oath or affirmation for all annual

[7] For example, the system will prompt the user for a correction if the components listed as assets do not total to the amount entered for total assets, or if certain types of trading assets and liabilities are reported in the balance sheet but there are no gains or losses reported in the income statement with respect to such assets.

[8] The CPO has responsibility for establishing users and their on-line capabilities through a person designated as its Security Manager with NFA.

[9] The Security Manager procedure is part of NFA's existing electronic system for registration processing. The Commission adopted regulation amendments in 2002 to enable NFA to utilize an online system for registration functions. See 67 FR 38,869 (June 6, 2002).

reports and account statements, and to maintain records of the key financial balances submitted to NFA that clearly demonstrate how such balances were derived. The Commission hereby requests comment on the foregoing amendments proposed to implement electronic filing of commodity pool annual reports with NFA.

The Commission also requests comment on the following proposed amendments intended to clarify certain aspects of the Commission's regulations applicable to CPOs with respect to financial reporting. Regulation 4.7(b)(2) requires that an account statement signed and affirmed by the CPO be prepared and distributed to pool participants no less frequently than quarterly within 30 calendar days after the end of the reporting period. The account statement must indicate: (1) The net asset value of the exempt pool as of the end of the reporting period; (2) the change in net asset value from the end of the previous reporting period; and (3) the net asset value per outstanding unit of participation in the exempt pool as of the end of the reporting period.

The Commission proposed to amend Rule 4.7(b)(2) to clarify that the account statement provided to participants must be prepared in accordance with generally accepted accounting principles as are other financial reports required in Part 4 of the Commission's Regulations. By requiring that the financial information contained in the account statement is computed and presented in accordance with generally accepted accounting principles, the Commission is assuring that participants receive information that is computed and presented in compliance with established professional standards.

Regulation 4.22(d) requires that the certification of commodity pool annual reports by independent accountants be made in accordance with the certification requirements of Regulation 1.16 that are applicable to the financial statements of FCMs and IBs, with specific exceptions. Rule 4.22(d) does not exempt CPOs from Regulation 1.16(g), which requires written notification to be given to the NFA and to the Commission of changes in the entity's independent accountant. In order to make clear that this requirement applies to CPOs, the Commission hereby proposes to amend Regulation 4.22(d) to specifically state that Rule 1.16(g) is also applicable to CPOs with respect to notifications of changes in the independent accountants engaged for the certification of commodity pool financial statements. By clarifying this responsibility for compliance, the Commission will be assured of receiving proper notice of important circumstances with regards to changes of independent accountants, which changes may be indicative of disagreements with auditors or other matters of interest to the Commission concerning the commodity pool.

Regulation 4.22(f)(1) provides a mechanism for CPOs that cannot distribute annual reports for pools within the required timeframe without substantial undue hardship to file applications of extensions of time with NFA. In the context of requesting such an extension, the application to NFA must be accompanied by a letter from the pool's independent public accountant. One of the items that must be addressed in the letter is whether the independent accountant has any indication from the audit work in process to indicate that the CPO is not meeting ''segregation'' requirements. The Commission hereby proposes to amend Regulation 4.22(f)(1)(ii)(B) to clarify that this does not refer to the segregation requirements of Regulation 1.20 applicable to FCMs, but instead refers to the prohibition on commingling of funds of a commodity pool with the assets of any other person contained in Regulation 4.20(c).[10]

Regulations 4.22(g)(2) and (3) require notifications to be made to the Commission concerning CPOs' election of fiscal years for commodity pools other than the calendar year or subsequent changes in fiscal year-ends. The Commission hereby proposes to amend these Regulations so that such notifications are solely required to be filed with NFA and not the Commission, consistent with other financial reporting filings that are now made to NFA directly as a result of functions the Commission has authorized NFA to preform.[11] The Commission has determined this function to be sufficiently related to other functions delegated to NFA with respect to the review of commodity pool financial reporting that it would be beneficial for this notice also to be made directly by CPOs to NFA and for NFA to process and maintain the records of these notices. As a result, the Commission believes the receiving and processing of CPOs' election of fiscal years and subsequent changes in fiscal years for commodity pools should similarly be delegated to NFA by rule amendment.

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing regulations, consider the impact of those regulations on small businesses. The Commission previously has established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on such entities in accordance with the RFA.[12] The Commission has determined previously that registered CPOs are not small entities for the purpose of the RFA.[13] The proposed amendments to Regulation 4.7 and Regulation 4.22 would apply only to registered CPOs. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action proposed to be taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[14] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The amendment being proposed would, if approved, alter the method of collection of information required under Regulation 4.22. Pursuant to the PRA, the Commission has submitted a copy of this section to the Office of Management and Budget (''OMB'') for its review.

Collection of Information. (Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures

[10] The language originally proposed was ''the segregation requirements of § 4.20(c)'' showing the intent of the reference to reflect Regulation 4.20 and not FCM segregation requirements contained in Commission Regulation 1.20. 45 FR 51,600 at 51,610 (August 4, 1980).

[11] By order dated December 11, 2002, the Commission authorized NFA to: (1) Receive and review annual financial reports required to be filed by CPOs pursuant to Regulations 4.7(b)(3) and 4.22(c), including annual financial reports required to be filed by CPOs that have claimed relief pursuant to Regulation 4.12(b) with respect to qualifying pools, and to review such reports for compliance with the Act and the Commission regulations thereunder and to provide notice of deficiencies; (2) receive and grant or deny applications filed pursuant to Regulation 4.22(f)(1) for extensions of time to distribute annual financial reports; and (3) process notices of claims of extension of time to distribute and file annual financial reports filed pursuant to Regulation 4.22(f)(2). In addition, the Commission authorized NFA to maintain and to serve as the official custodian of such records. 67 FR 77,470 (December 18, 2002).

[12] 47 FR 18618 (April 30, 1982).

[13] 47 FR at 18619.

[14] 44 U.S.C. 3507(d).

Commission Merchants, OMB Control Number 3038–0005.)

The expected effect of the proposed amended regulations will be to slightly increase the burden for this collection of information due to an estimated increase by one quarter hour of the filing of annual reports electronically. However, the burden most recently approved by OMB for this collection was submitted in 2002 based on estimates of anticipated changes resulting from significant amendments to Part 4 requirements. Although this proposed amendment will slightly impact the estimated average hours per response for annual report filings, the other assumptions concerning average hours per response have not changed. However, the burden is being recalculated and submitted in its entirety for this collection due to availability of updated information on annual responses and respondents since the Part 4 regulation amendments went into effect, which updated information does not reflect the realization of the decrease in burden that was previously estimated to occur. The Commission estimates the burden of this collection of information as follows:

Estimated Annual Reporting Burden

Number of Respondents: 8,500.
Total Annual Responses: 27,575.
Total Annual Hours: 166,360.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160. The Commission considers comments by the public on this proposed collection of information in—

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, utility, and clarity of the information to be collected; and

Minimizing 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.

Organizations and individuals desiring to submit comments on the information collection should contact the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Commission. OMB is required to make a decision concerning the collection of information contained in these proposed Regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed Regulations.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by Section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new Regulation under the Act. By its terms, Section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new Regulation or to determine whether the benefits of the Regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The proposed amendments to Regulation 4.7 and 4.22 would require CPOs to electronically file commodity pool annual reports with NFA with an oath or affirmation submitted electronically instead of with a manual signature.

The Commission is considering the costs and benefits of this proposed regulation in light of the specific provisions of Section 15(a) of the Act, as follows:

1. *Protection of market participants and the public.* The proposed amendment should not affect the protection of market participants and the public as it provides an alternate method of delivery of information contained in commodity pool annual reports but does not substantively alter the character of such information or the nature of the oath or affirmation that must accompany the submission or distribution of such information.

2. *Efficiency and competition.* The Commission anticipates that the proposed amendment will benefit efficiency by permitting NFA to streamline its process for receiving annual report submissions from CPOs. The proposed amendment is considered by the Commission as benefiting efficiency and not impacting competition.

3. *Financial integrity of futures markets and price discovery.* The proposed amendment should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity of futures markets or the price discovery function of such markets.

4. *Sound risk management practices.* The proposed amendment should have no effect, from the standpoint of imposing costs or creating benefits, on sound risk management practices.

5. *Other public interest considerations.* The Commission believes that the proposed regulation requiring electronic filing for the submission by CPOs of annual reports to NFA is beneficial in that is should streamline the timeliness of delivery and electronic accessibility of such reports, and permit NFA to retain such reports in a more streamlined and accessible manner.

After considering these factors, the Commission has determined to propose the amendments discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposal with their comment letters.

List of Subjects in 17 CFR Part 4

Advertising, Commodity futures, Consumer Protection, Reporting and recordkeeping requirements.

Accordingly, 17 CFR Chapter I is proposed to be amended as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

2. Section 4.7 is amended by revising paragraphs (b)(2) and (b)(3)(i) introductory text to read as follows:

§ 4.7 Exemption from certain Part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

* * * * *

(b) * * *

(2) *Periodic reporting relief.* Exemption from the specific requirements of §§ 4.22(a) and (b); *Provided,* That a statement signed and affirmed in accordance with § 4.22(h) is prepared and distributed to pool participants no less frequently than quarterly within 30 calendar days after the end of the reporting period. This statement must be prepared in accordance with generally accepted accounting principles and indicate:

(i) The net asset value of the exempt pool as of the end of the reporting period;

(ii) The change in net asset value from the end of the previous reporting period; and

(iii) The net asset value per outstanding unit of participation in the exempt pool as of the end of the reporting period.

(3) *Annual report relief.* (i) Exemption from the specific requirements in §§ 4.22(c) and (d); *Provided,* That within 90 calendar days after the end of the exempt pool's fiscal year, the commodity pool operator electronically files with the National Futures Association and distributes to each participant in lieu of the financial information and statements specified by those sections, an annual report for the exempt pool, affirmed in accordance with § 4.22(h) which contains, at a minimum:

* * * * *

3. Section 4.22 is amended by:

a. revising paragraph (c) introductory text;

b. revising paragraph (d) introductory text;

c. revising paragraph (f)(1)(ii)(B);

d. revising paragraphs (g)(2) and (3);

e. revising paragraph (h); and

f. removing paragraph (j), to read as follows:

§ 4.22 Reporting to pool participants.

* * * * *

(c) Except as provided in paragraph (c)(6) of this section, each commodity pool operator registered or required to be registered under the Act must distribute an Annual Report to each participant in each pool that it operates, and must electronically submit a copy of the Report and key financial balances from the Report to the National Futures Association pursuant to the electronic filing procedures of the National Futures Association, within 90 calendar days after the end of the pool's fiscal year or the permanent cessation of trading, whichever is earlier, but in no event longer than 90 days after funds are returned to pool participants; *Provided, however,* That if during an calendar year the commodity pool operator did not operate a commodity pool, the pool operator must so notify the National Futures Association within 30 calendar days after the end of such calendar year. The Annual Report must be affirmed pursuant to paragraph (h) of this section and must contain the following:

* * * * *

(d) The financial statement in the Annual Report must be presented and computed in accordance with generally accepted accounting principles consistently applied and must be certified by an independent public accountant. The requirements of § 1.16(g) of this chapter shall apply with respect to the engagement of such independent public accountants and the certification must be in accordance with § 1.16 of this chapter, except that the following requirements of that section shall not apply:

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(B) Do you have any indication from the part of your audit completed to date that would lead you to believe that the commodity pool operator was or is not meeting the recordkeeping requirements of this part 4 or was or is not complying with the § 4.20(c) prohibition on commingling of property of any pool with the property of any other person?

* * * * *

(g)(1) * * *

(2) If a commodity pool operator elects a fiscal year other than the calendar year, it must give written notice of the election to all participants and must file the notice with the National Futures Association within 90 calendar days after the date of the pool's formation. If this notice is not given, the pool operator will be deemed to have elected the calendar year as the pool's fiscal year.

(3) The commodity pool operator must continue to use the elected fiscal year for the pool unless it provides written notice of any proposed change to all participants and files such notice with the National Futures Association at least 90 days before the change and the National Futures Association does not disapprove the change within 30 days after the filing of the notice.

(h)(1) Each Account Statement and Annual Report, including an Account Statement or Annual Report provided pursuant to § 4.7(b) or 4.12(b), must contain an oath or affirmation that, to the best of the knowledge and belief of the individual making the oath or affirmation, the information contained in the document is accurate and complete; *Provided, however,* That it shall be unlawful for the individual to make such oath or affirmation if the individual knows or should know that any of the information in the document is not accurate and complete.

(2) Each oath or affirmation must be made by a representative duly authorized to bind the pool operator, and

(i) For the copy of a commodity pool's Annual Report submitted to the National Futures Association, such representative shall satisfy the required oath or affirmation through compliance with the National Futures Association's electronic filing procedures, and

(ii) for a commodity pool Account Statement or Annual Report distributed to participants, a facsimile of the manually signed oath or affirmation of such representative may be used so long as the manually signed original is retained in accordance with § 4.23.

(3) For each manually signed oath or affirmation, there must be typed beneath the signed oath or affirmation:

(i) The name of the individual signing the document;

(ii) The capacity in which he is signing;

(iii) The name of the commodity pool operator for whom he is signing; and

(iv) The name of the commodity pool for which the document is being distributed.

* * * * *

4. Section 4.23 is amended by adding a new paragraph (a)(12) to read as follows:

§ 4.23 Recordkeeping.

* * * * *

(a) * * *

(12) A manually signed copy of each Account Statement and Annual Report provided pursuant to § 4.22, § 4.7(b) or 4.12(b), and records of the key financial balances submitted to the National Futures Association for each commodity pool Annual Report, which records must clearly demonstrate how the key financial balances were compiled from the Annual Report.

* * * * *

Issued in Washington, DC, on December 7, 2005 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–23965 Filed 12–14–05; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 15, 16, 17, 18, 19 and 21

RIN 3038–AC22

Market and Large Trader Reporting

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing several amendments to its market and large trader reporting rules. First, the Commission is proposing to establish a new reporting level for futures and option contracts based on 3-Year U.S. Treasury Notes. Second, the Commission is proposing to clarify the application of the reporting rules to registered derivatives transaction execution facilities (DTEFs). Third, the Commission is proposing to require designated contract markets to publicly disseminate integrated volume data that separately identifies the volume generated from block trades. Fourth, the Commission is proposing to adopt a reporting framework for contracts that are exclusively self-cleared. Finally, the Commission is proposing a number of conforming, clarifying, and technical amendments.

DATES: Comments must be received by February 13, 2006.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile to 202.418.5521, or by e-mail to *secretary@cftc.gov.* Reference should be made to the ''Market and Large Trader Reporting.'' Comments may also be submitted through the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Gary Martinaitis, Associate Deputy Director for Market Information, Market Surveillance Section (telephone 202.418.5209, e-mail *gmartinaitis@cftc.gov*), or Bruce Fekrat, Special Counsel, Office of the Director (telephone 202.418.5578, e-mail *bfekrat@cftc.gov*), Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. The Commission's Authority To Implement the Reporting Rules

The market and large trader reporting rules (reporting rules) are contained in parts 15 through 21 of the Commission's regulations.[1] Together, the reporting rules are structured to ensure that the Commission receives adequate information to carry out its market and financial surveillance programs.[2] The reporting rules are implemented by the Commission partly pursuant to the authority of sections 4a, 4c(b), 4g, and 4i of the Commodity Exchange Act (CEA or Act).[3] Section 4a of the Act permits the Commission to set, approve exchange-set, and enforce speculative position limits.[4] Section 4c(b) of the Act gives the Commission plenary authority to regulate transactions that involve commodity options.[5] Section 4g of the Act imposes reporting and recordkeeping obligations on registered entities, and requires each registrant, whether a futures commission merchant (FCM), introducing broker, floor broker, or floor trader, to file such reports as the Commission may require on proprietary and customer positions executed on any board of trade in the United States or elsewhere.[6] Lastly, section 4i of the Act requires the filing of such reports as the Commission may require when positions made or obtained on contract markets or DTEFs equal or exceed Commission-set levels.[7]

II. Establishing a Reporting Level for Contracts Based on 3-Year U.S. Treasury Notes

The Commission's reporting rules, among other things, require FCMs, foreign brokers, and clearing members (collectively reporting firms) to report position and identifying information of the largest futures and option traders to the Commission.[8] Upon special call, traders must separately provide position and identifying information to the Commission.[9] For both reporting firms and traders, the obligation to report under parts 17 and 18 of the Commission's regulations is triggered when traders hold or control reportable positions.[10]

Commission rule 15.03(b) delineates contract reporting levels for commodity futures and option contracts.[11] Rule 15.03(b) applies a default reporting level of 25 contracts to contracts not specifically itemized by the rule. Notably, rule 15.03 does not specify a reporting level for futures or option contracts based on 3-Year U.S. Treasury Notes (3-Year T-Notes).

At the present time, 3-Year T-Notes are listed solely by the U.S. Futures Exchange, LLC (Eurex US). On January 26, 2005, the Division of Market Oversight (staff) issued no-action relief to Eurex US, FCMs, foreign brokers, clearing members, and traders that complied with all regulatory obligations arising from a contract reporting level of 750 contracts instead of the otherwise applicable default reporting level of 25 contracts.[12] The staff based its grant of relief primarily on the conclusion that historical trading in 2-Year T-Notes served as precedent for trading in 3-Year

[1] 17 CFR parts 15 to 21.

[2] The market surveillance programs analyze market information to detect and prevent market disruptions and enforce speculative position limits. The financial surveillance programs combine market information with financial data to assess the financial risks presented by large customer positions to Commission registrants and clearing organizations. *See* 69 FR 76392 (December 21, 2004).

[3] 7 U.S.C. 1 *et seq.*

[4] 7 U.S.C. 6a.

[5] 7 U.S.C. 6c(b).

[6] 7 U.S.C. 6g.

[7] 7 U.S.C. 6i. In addition, CEA section 8a(5) is an enabling provision that grants to the Commission the authority to adopt rules that in its judgment are reasonably necessary to accomplish any of the purposes of the Act. 7 U.S.C. 12a(5). Pursuant to CEA section 3(b), the Act seeks to ensure the financial integrity of regulated transactions and to prevent price manipulation and other disruptions to market integrity. 7 U.S.C. 5(b). Collectively, these purposes warrant the maintenance of an effective and vigorous system of market and financial surveillance.

[8] *See* 17 CFR part 17.

[9] *See* 17 CFR part 18.

[10] A reportable position is any open contract position, as further defined in the rules, that at the close of the market equals or exceeds the quantity specified in Commission rule 15.03. *See* 17 CFR 15.00 and 15.03. The firms that carry accounts for traders holding reportable positions are required to identify those accounts on Form 102 and to report positions in the accounts to the Commission. *See* 17 CFR 17.00 and 17.01. The individual traders who hold or control reportable positions are required to report position and identifying information to the Commission only in response to a special call. *See* 17 CFR part 18.

[11] The Commission typically calibrates contract reporting levels to ensure that the aggregate of all positions reported to the Commission represents approximately 70 to 90 percent of the open interest in any given contract. The Commission periodically analyzes contract terms, trading volume, open interest, the number and position sizes of individual traders, and its surveillance experience with specific contracts, to determine if coverage of open interest is adequate for effective market surveillance. 69 FR 76392, 76393 (December 21, 2004).

[12] CFTC Staff Letter 05–03 Comm. Fut. L. Rep. (CCH) ¶ 30,024 (January 26, 2005).

T-Notes.[13] Based upon the staff's surveillance experience with 2-Year T-Notes, the liquidity of the securities underlying treasury futures and option contracts, and the securities available for delivery against 3-Year T-Notes,[14] the Commission is herein proposing to adopt a 3-Year T-Notes reporting level of 750 contracts.

III. Derivatives Transaction Execution Facilities

A. The Commission's Authority To Subject DTEFs to the Reporting Rules

The CEA, as amended by the Commodity Futures Modernization Act of 2000 (CFMA),[15] gives the Commission the statutory authority to subject DTEFs and transactions on DTEFs to the reporting rules.[16] First, as noted above, section 4c(b) of the Act, regardless of the venue of trading, gives the Commission plenary authority to regulate transactions that involve commodity options. Second, sections 4a and 4i of the Act explicitly reference transactions executed on or subject to the rules of DTEFs. Finally, section 4g of the Act imposes reporting and recordkeeping obligations on registered entities and certain Commission registrants trading on registered entities and boards of trade. A registered entity is defined by CEA section 1a(29) to include DTEFs.[17] A board of trade is defined by section 1a(2) of the Act to include ''any organized exchange or other trading facility.'' [18]

B. Proposed Rules

1. Current Commission Rule 37.2

The current language of Commission rule 37.2, which is designed to exempt DTEFs from the bulk of Commission regulations otherwise pertinent to trading facilities, reserves the applicability of parts 15 to 21 to DTEFs, but does so through incorporation by reference and without substantial clarity.[19] Specifically, rule 37.2 provides that DTEFs are not, as applicable to the market, exempt from parts 15 to 21, and further provides that parts 15 to 21, when applicable to DTEFs, shall be viewed as though they were set forth in rule 37.2 and included specific reference to DTEFs.

As part of the Commission's continuing effort to better implement the amendments introduced to the Act by the CFMA, the Commission is now proposing to define DTEFs directly into rules 15.00 to 15.04 and parts 16 through 21 of the Commission's regulations. The proposed amendments are not in any way designed to alter the existing reporting obligations of DTEFs or their market participants.

2. The Replacement of Terms

The current provisions of parts 15 to 21, with the exception of Commission rule 15.05, focus only on contract markets.[20] The Commission is proposing to define the new term reporting market in Commission rule 15.00(m) to include DTEFs in addition to designated contract markets. In order to directly effectuate the applicability of rules 15.00 to 15.04 and parts 16 through 21 of the Commission's regulations to DTEFs, the Commission is next proposing to replace certain references to contract markets in those rules and parts with references to reporting markets.[21]

3. Operational Flexibility and the Definition of Reporting Market

In comparison with designated contract markets, DTEFs are required to comply with a less comprehensive set of Core Principles.[22] Thus, in certain respects, DTEFs have greater operational flexibility than designated contract markets. For example, pursuant to section 5(d)(11) of the Act, transactions on designated contract markets, with the exception of security futures products, must be cleared through Commission registered derivatives clearing organizations.[23] In contrast, pursuant to section 5a(c)(4) of the Act, transactions on DTEFs may be cleared through clearing organizations other than Commission registered clearing organizations.[24]

Despite this potential for greater operational flexibility, DTEFs must comply with statutory safeguards that restrict the contracts that they may list and the manner in which certain market participants may exercise trading privileges.[25] For example, a DTEF may permit trading access to all eligible contract participants, as that term is defined by section 1a(13) of the Act,[26] and all retail traders that trade through FCMs having at least $20 million in net capital, but only in futures and option contracts that are based on commodities that have no cash market, are security futures products, or are highly unlikely to be susceptible to the threat of manipulation.[27] As an additional example, a DTEF may list any futures or option contract on any underlying commodity, except one based on the agricultural commodities enumerated in section 1a(4) of the Act,[28] but only if trading access is limited to eligible commercial entities, as that term is defined by section 1a(11) of the Act.[29]

As proposed, rule 15.00(m) would define a reporting market to mean a designated contract market and, unless determined otherwise by the Commission with respect to the facility or a specific contract listed by the facility, a DTEF. The determination requirement in the proposed definition of reporting market is designed to reconcile the Commission's responsibility to adequately surveil transactions on DTEFs with the Congressional directive to permit DTEFs to operate, in certain respects, more flexibly than designated contract markets. Accordingly, in determining that a DTEF is not a reporting market, and thereby rendering some or all of the provisions of the reporting rules inapplicable to the facility or a specific contract listed by the facility, the Commission would consider on a case by case basis, several non-exhaustive

[13] *Id.* The contract reporting level for 2-Year T-Notes is currently 1,000 contracts. 17 CFR 15.03.

[14] The deliverable supply for the March 2005 3-Year T-Notes had a value of approximately $95 billion.

[15] CFMA, Appendix E of Pub. L. 106–554, 114 Stat. 2763.

[16] Although the Commission has received indications of interest from potential DTEF applicants, no board of trade has registered with the Commission as a DTEF, and there are no presently pending applications for such registration.

[17] 7 U.S.C. 1a(29).

[18] 7 U.S.C. 1a(2).

[19] 17 CFR 37.2.

[20] Commission rule 15.05 relates to the appointment of an agent for service of process for foreign persons. 17 CFR 15.05. Rule 15.05 is self-effectuating and permits the Commission to expeditiously communicate with foreign persons and entities that trade on the domestic commodity exchanges. *See* 45 FR 30426 (May 8, 1980). The rule was amended in 2001 to explicitly apply to designated contract markets and registered derivatives transaction execution facilities. *See* 66 FR 42256 (August 10, 2001).

[21] Specifically, the Commission is proposing to replace the term contract market with the term reporting market in the rule 15.00 definition of a reportable position, in rules 15.01(a), 16.06, 18.05, and 21.01, and throughout the provisions of rules 16.00, 16.01, 16.07, 17.00, 17.04, 18.00, 21.02, and 21.03. In addition, the Commission is proposing to replace the term contract market with the term reporting market in the heading of part 16, part 17, and the heading of sections 21.02 and 21.03. Other proposed amendments reconciling existing rules with the proposed replacement of terms are discussed in Section VI of this notice of rulemaking.

[22] *Compare* 7 U.S.C. 7(d) (Core Principles for designated contract markets) *with* 7a(d) (Core Principles for DTEFs).

[23] *See* 7 U.S.C. 7(d)(11) and guidance on Core Principle 11 in Appendix B to 17 CFR part 38.

[24] *See* 7 U.S.C. 7a(c)(4) and guidance on Registration Criterion 4 in Appendix A to 17 CFR part 37.

[25] 7 *See* U.S.C. 7a(b).

[26] 7 U.S.C. 1a(13).

[27] *See* 7 U.S.C. 7a(b). Pursuant to section 5a(b)(2)(E) of the Act, the Commission may also make contract suitability determinations on an individualized basis. 7 U.S.C. 7a(b)(2)(E).

[28] 7 U.S.C. 1a(4).

[29] 7 U.S.C. 1a(11) and 7a(b)(2)(F).

factors.[30] These factors include a DTEF's surveillance capabilities, the characteristics of commodities underlying specific DTEF transactions, the surveillance history of trading with precedential value, potential defects in the pricing of DTEF transactions, the value of market data to market participants, the value of market data to commercial entities, and the impact that market disruptions may have on Commission registrants and other registered entities.

4. Market Data

Commission rule 16.01 requires that contract markets submit directly to the Commission data on trading volume, open interest, futures delivery notices, exchanges of futures, option deltas, prices, and critical dates on a daily basis.[31] As with the other provisions of the reporting rules, and with the exception of the public dissemination requirement of rule 16.01 that is discussed below, the proposed amendments to rule 16.01 would require DTEFs to submit market data to the Commission unless determined otherwise by the Commission.

As mentioned above, in addition to submitting data directly to the Commission, rule 16.01 requires contract markets to publicly disseminate data on trading volume, open interest, futures delivery notices, exchanges of futures, option deltas, and prices on a daily basis. Unlike designated contract markets, however, DTEFs are statutorily obligated to publicly disseminate information on settlement prices, volume, open interest, and opening and closing ranges on a daily basis when the Commission determines that a DTEF contract performs a significant price discovery function for transactions in the cash market for the commodity underlying the contract.[32]

The language triggering the public dissemination requirement for DTEFs is similar to the language triggering the same requirement for exempt boards of trade[33] and exempt commercial markets.[34] The Commission therefore believes that DTEFs should not of necessity be subject to the same public dissemination requirement as designated contract markets.[35] The proposed amendments to rule 16.01 would require both designated contract markets and DTEFs to record and submit market data to the Commission, but would only obligate designated contract markets to comply with the rule's public dissemination requirement. As a result, the public dissemination requirement for DTEF contracts would be implemented under the rubric of DTEF Core Principle 5, including any Commission regulation adopted thereunder and subsequent Commission statements providing additional guidance and establishing acceptable practices for the manner of compliance with that core principle.[36] Proposed paragraph (e) of Commission rule 16.01 emphasizes this result.

IV. Block Trade Volume and the Publication of Market Data

On December 21, 2000, the President signed into law the CFMA, extensively revising the Act, and facilitating the availability of transactions, such as block trades, that are subject to the rules of an exchange, but lawfully negotiated and executed away from the centralized marketplace.[37] Block trades are typically subject to exchange rules that establish minimum size thresholds, participant eligibility requirements, pricing limits, and trade reporting parameters.[38] It is generally believed that market participants execute large orders through block trades in order to achieve greater price and execution certainty than otherwise attainable in the centralized marketplace.

In order to recognize the growing importance and use of off-centralized market transactions, the Commission adopted final rules in December of 2004 that required designated contract markets to separately identify, report, and publish the volume generated from trades involving the exchange of futures for a commodity or for a derivatives position.[39] To more comprehensively recognize the growing use and importance of off-centralized market transactions, the Commission is now similarly proposing to amend rule 16.01 to require designated contract markets to record and make readily available to the news media and the general public, as part of the total mix of market data publicly disseminated pursuant to rule 16.01, the volume generated from trades that are block trades.

Commission rule 1.38(b) currently requires designated contract markets to separately identify and mark all off-centralized market transactions, including block trades.[40] In addition, several designated contract markets disseminate public reports that separately account for the volume generated from block trades.[41] The proposed amendments to rule 16.01 seek to codify this industry practice, and require all designated contract markets to record the volume generated from block trades for each contract, and make that information readily available to the news media and the general public as a part of the total mix of market data publicly disseminated on a daily basis.[42]

[30] When the Commission adopted rule 37.2 in August of 2001, it specifically determined to defer the extension of routine large trader reporting requirements to DTEF transactions involving Treasury instruments. *See* 66 FR 42256, 42261 (August 10, 2001). When the Commission adopted rule 41.25 in November of 2001, it specifically determined to require part 16 reports from all DTEFs listing security futures products. *See* 66 FR 55078 (November 1, 2001). Under the proposed rules, the Commission would, without exception, deem such DTEFs to be part 16 reporting markets for security futures products.

[31] 17 CFR 16.01.

[32] *Compare* 7 U.S.C. 7(d)(8) (designated contract market Core Principle 8), *with* 7 U.S.C. 7a(d)(5) (DTEF Core Principle 5).

[33] 7 U.S.C. 7a–3(d).

[34] 7 U.S.C. 2(h)(4)(D). Aside from the requirement to comply with minimal notice and reporting obligations, exempt boards of trade and exempt commercial markets are generally not subject to Commission oversight. *See* 17 CFR part 36.

[35] The Commission recently proposed to apply to DTEFs and exempt boards of trade the same standard that currently applies to exempt commercial markets for determining whether a contract performs a significant price discovery function for transactions in the cash market for an underlying commodity. 70 FR 39672, 39674 (July 11, 2005). Specifically, in making such a determination with respect to DTEFs and exempt boards of trades, the Commission has proposed to consider (1) whether cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a more than occasional basis; or (2) whether market prices are routinely disseminated in a widely distributed industry publication and are routinely consulted by industry participants in pricing cash market transactions. *Id.*

[36] *See* Commission rule 37.6(d)(4) and guidance on DTEF Core Principle 5 in Appendix B to part 37 of the Commission's regulations. 17 CFR 37.6(d)(4) and Appendix B to 17 CFR part 37.

[37] For example, the CFMA specifically permitted designated contract markets to establish trading rules that authorize the exchange of futures for swaps, or allow a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of a designated contract market or derivatives clearing organization. *See* 7 U.S.C. 7(b)(3).

[38] *See* 69 FR 39880, 39882 (July 1, 2004).

[39] 69 FR 76392, 76394 (December 21, 2004).

[40] 17 CFR 1.38(b).

[41] For example, the Chicago Board of Trade publicly disseminates daily block trade volume data for eligible contracts in a category of volume termed Wholesale Trades. *See* CBOT Delayed Charts, *available at* http://cbt.com/cbot/pub/page/0,3181,801,00.html. The Chicago Mercantile Exchange also disseminates daily volume data through its Web site that separately accounts for the volume generated from block trades.

[42] As previously discussed, DTEFs, unlike designated contract markets, are statutorily obligated to publicly disseminate volume data on a daily basis when the Commission determines that a DTEF contract performs a significant price discovery function for transactions in the cash market for the commodity underlying the contract. Under the proposed rules, the public dissemination requirement for DTEF contracts, including the reporting of particularized block trade volume data, would be implemented under the rubric of DTEF Core Principle 5.

Given the current stage of technological development, the Commission believes that designated contract markets must generally satisfy their obligation to make market data readily available to the news media and the general public through the Internet and on Web pages that are conveniently accessed and easily navigable. In order to further emphasize the obligation to disseminate market data in a manner that is both useful and accessible, proposed rule 16.01(e) would introduce two additional requirements. First, proposed rule 16.01(e) would specifically require the integrated publication of volume data. The Commission believes that the integrated publication of volume data, along with the public dissemination of block trade volume data, will enhance the ability of market participants and the general public to effectively analyze the determinants of market prices, the depth of market liquidity, and the utility of contracts as hedging and pricing tools. Second, proposed rule 16.01(e) would require designated contract markets to present market data in a format that would readily enable members of the news media and the general public to consider such data. This presentation requirement would ensure that designated contract markets are fully aware of their present obligation to publicly disseminate market data in a user friendly format.

With regard to the publication of volume data, the Commission notes that the proposed amendments to rule 16.01 would require the publication of data on the total volume of trading, the volume generated by exchanges of futures, and the volume generated from block trades, for each contract. The Commission herein solicits comment on whether using a catch-all category to identify trading volume generated from all off-centralized market trades that are not exchanges of futures is preferable to identifying the volume generated from specific off-centralized market transactions such as block trades. The Commission also solicits comment on whether, in the alternative, any further refinement of volume data, beyond the proposed breakdown into the categories listed above, is desirable, or necessary, for the proper analysis of market prices and liquidity.

In addition, as proposed, the amendments to rule 16.01 would require designated contract markets to publicly disseminate separate block trade volume data, but would not require the submission of such data to the Commission. The Commission has assessed the cost to the Commission of integrating separate block trade volume data into its information systems, and has determined that cost to be considerable. The Commission will therefore independently derive or compile such data as necessary to fulfill its market and financial surveillance responsibilities.

V. Self-Cleared Contracts

A. Market Structure

In February of 2004, the Commission designated HedgeStreet, Inc. (HedgeStreet or Exchange) as a contract market pursuant to sections 5 and 6(a) of the Act.[43] In its application for designation, HedgeStreet presented a market structure that was substantially different from other active designated contract markets. For example, the market structure presented by HedgeStreet did not permit intermediaries to handle the orders or funds of traders in connection with the purchase or sale of listed contracts.[44] Consequently, the Exchange sought to directly hold, at all times, sufficient trader funds to cover the maximum possible loss that could be sustained by market participants.[45] The Exchange also offered products with appeal to members of the general public. For example, HedgeStreet sought to offer, and currently does offer, European style binary options on various commodities that pay a fixed $10.00 if in the money upon expiration.[46]

The market structure initially established by HedgeStreet does not, in certain respects, comport well with the obligations imposed by the Commission's reporting rules. Presently, the reporting rules are designed to collect information from heavily intermediated markets that permit un-intermediated trading and clearing access only to well capitalized members.[47] In anticipation of the adoption of comparable market structures by other exchanges, the Commission is herein proposing an alternative reporting approach that would apply to markets that do not permit intermediaries to handle the funds of traders in connection with the sale or purchase of specific contracts. For ease of reference, the term exclusively self-cleared contracts is used herein, and defined by proposed Commission rule 15.00(f), to refer to such contracts.[48]

B. Proposed Rules

1. Background on Commission Rules 17.00 and 17.01

The Commission employs a comprehensive reporting system to enforce speculative position limits and assess the activities and potential market power of traders. Pursuant to Commission rule 17.00, FCMs, foreign brokers, and clearing members file daily reports with the Commission particularizing futures and option positions when such positions are at or above the contract reporting levels delineated in rule 15.03.[49] If, at the close of the market on any business day, an FCM, foreign broker, or clearing member carries a position at or above the Commission's reporting level in any single futures month or option expiration, the firm reports the entire position on the same exchange in all futures and option expiration months in that commodity, regardless of size.[50] Since traders frequently hold positions through multiple brokers and have financial interests in multiple accounts, the Commission, pursuant to rule 17.01, routinely collects information that enables its surveillance staff to aggregate related accounts.[51] Specifically, FCMs, foreign brokers, and clearing members file Forms 102 to identify the name, address, and occupation of the person or persons who own each new account that acquires a reportable position.[52]

2. Exclusively Self-cleared Contracts

An FCM, by definition, is a person that accepts the property of customers to ''margin, guarantee, or secure'' customer trades.[53] Likewise, a foreign broker is a person located outside the United States or its territories ''who carries an account'' for any other person.[54] With respect to transactions in exclusively

[43] 7 U.S.C. 7 and 8(a); Order of Designation as a Contract Market (February 18, 2004).

[44] *See* Order of Registration as a Derivatives Clearing Organization (February 18, 2004); *see also* Staff Designation Memorandum from the Division of Market Oversight (Staff Memorandum) at 47 (February 10, 2004).

[45] *Id.*

[46] Staff Memorandum at 29. In September of 2005, HedgeStreet submitted to the Commission new and amended rules to support a request to offer larger size contracts that could be intermediated and cleared by members of The Clearing Corporation. Letter and related submissions from Stephanie Ford, Vice-President, HedgeStreet, Inc. to Jean A. Webb, Secretary of the Commission (September 6, 2005)(on file with the Commission), *available at http://www.cftc.gov/dea/deapendingindustryfilings.htm.*

[47] *See* 17 CFR parts 16 to 18.

[48] The term exclusively self-cleared contract is devised for use in parts 15 through 21 only and is not meant to give meaning to the terms intermediary or intermediation (or any variant of those terms) in any way as used by the Commission, in the Act, or in Commission regulations promulgated under the Act.

[49] *See* 17 CFR 15.00, 15.03 and 17.00.

[50] 17 CFR 17.00(a).

[51] 17 CFR 17.01.

[52] *See id.*

[53] 7 U.S.C. 1a(20).

[54] 17 CFR 15.00(a)(1).

self-cleared contracts, there are no intermediaries who handle customer funds, and therefore, there are no FCMs or foreign brokers with reporting obligations under part 17 of the Commission's regulations.

In contrast, the term clearing member is defined by Commission rule 1.3(c) to include ''any person who is a member of, or enjoys the privileges of clearing trades in his own name through, the clearing organization of a contract market.'' [55] As such, all traders of exclusively self-cleared contracts squarely fit within the regulatory definition of a clearing member, and thereby have reporting obligations under part 17 of the Commission's regulations.

Pursuant to rule 17.00, clearing members, including all traders who are clearing members, must file daily reports with the Commission particularizing futures and option positions when such positions are at or above the contract reporting levels set by rule 15.03. Pursuant to rule 17.01, clearing members, including all traders who are clearing members, must file Forms 102 with the Commission to identify the name, address, and occupation of the person or persons who own each new account that acquires a reportable position. With respect to exclusively self-cleared contracts, all traders, by virtue of their status as clearing members, have to submit large trader position and identifying data to the Commission in compliance with rules 17.00 and 17.01 on a daily basis.

The reporting rules, however, are not designed to impose routine position and identifying reporting obligations on traders.[56] In 1981, the Commission explicitly disposed of routine trader reporting obligations in order to ''substantially decrease certain paperwork burdens on large traders and on the Commission itself.''[57] Instead, the Commission looked to intermediaries and well capitalized clearing members to ''facilitate the Commission's market surveillance efforts'' in the absence of routine trader reporting.[58] Since 1981, the design of the reporting rules has been to place the burden of reporting particularized position and identifying data on a routine basis in the first instance on market intermediaries and well capitalized persons that clear customer or proprietary positions.[59]

In accordance with the system of reporting fashioned by the reporting rules, the Commission believes that routine reporting obligations should not be placed on persons trading in exclusively self-cleared contracts. Intermediaries and clearing members typically are Commission registrants with vigorous internal controls, substantial resources, and extensive experience with regulatory compliance. With respect to exclusively self-cleared contracts, and in particular with respect to retail oriented exclusively self-cleared contracts, traders in general would not have the resources or regulatory experience to comply with large trader reporting obligations as a matter of routine.

In order to not place any daily reporting burden on traders of exclusively self-cleared contracts, the Commission is herein proposing rules that would effectively place the exchange listing exclusively self-cleared contracts in the regulatory position of its clearing members with respect to compliance with part 17 of the Commission's regulations.[60] As discussed above, all traders in exclusively self-cleared contracts are effectively clearing members. Under the proposed rules, reporting markets, a term which includes designated contract markets and DTEFs, with respect to exclusively self-cleared contracts, would be obligated to submit reportable position data under rule 17.00, and reportable identifying data under rule 17.01, on behalf of all clearing members.[61]

The Commission believes that this is a desirable result since reporting markets, by virtue of their regulated status, substantial resources, systems of regulatory compliance, and lines of communication with the Commission are in better position to routinely submit position and identifying data to the Commission.[62] As proposed by rules 17.00(i) and 17.01(h), reporting markets listing exclusively self-cleared contracts would be required, unless determined otherwise by the Commission, to provide the data required by rule 17.00(a) through (h) and 17.01(a) through (g) to the Commission on behalf of all traders of these contracts. Traders, nevertheless, would still be required to submit position and identifying data upon special call under part 18 of the Commission's regulations.

3. Clearing Member Reports

Pursuant to Commission rule 16.00, exchanges must submit confidential information to the Commission on the aggregate positions and trading activity of each clearing member. The exchanges, on a daily basis, report each clearing member's open long and short positions, purchases and sales, exchanges of futures, and futures delivery notices.[63] The data is reported separately by proprietary and customer accounts by futures month and, for options, by puts and calls by expiration date and strike price.[64]

As proposed, all traders holding positions in exclusively self-cleared contracts on reporting markets would squarely fit within the regulatory definition of a clearing member. Hence, reporting markets listing such contracts would be required by rule 16.00 to submit position data for every single trader on a daily basis, regardless of the position size of a trader. The Commission believes that the submission of voluminous disaggregated clearing member data pursuant to rule 16.00(a), with respect to exclusively self-cleared contracts, could place an undue burden on reporting markets, and would not generally further the Commission's market or financial surveillance efforts.

The Commission's staff uses clearing member data submitted by the exchanges to identify large cleared positions, to audit large trader reports filed by intermediaries and clearing members, and to identify account aggregation issues. Under the proposed alternative reporting scheme, clearing member reports for exclusively self-cleared contracts typically would not serve an audit function since clearing member and large trader reports would be submitted by the same person. Furthermore, under the proposed alternative reporting approach, reporting markets would be submitting disaggregated large trader reports in the

[55] 17 CFR 1.3(h). The Commission herein is proposing to amend the regulatory definition of a clearing member in rule 1.3 to explicitly extend to members of DTEFs.

[56] *See* 17 CFR parts 16 to 18.

[57] 46 FR 59960 (December 8, 1981).

[58] *Id.*

[59] *See id.*

[60] The Commission, through an order, has employed this approach for HedgeStreet. *See* Order of Designation as a Contract Market, paragraph 5 (February 18, 2004).

[61] The proposed reporting scheme for exclusively self-cleared contracts is narrowly tailored to be contract specific. In other words, a reporting market may list both exclusively self-cleared and other contracts. The alternative reporting approach, however, would apply only to exclusively self-cleared contracts.

[62] The Commission may, at some future date, consider amending the reporting obligations of clearing members with respect to contracts with low notional values that are not exclusively self-cleared. The Commission would consider amending these reporting obligations when retail market participants that self-clear are responsible for a substantial proportion of a contract's trading volume.

[63] 17 CFR 16.00(a).

[64] *Id.*

place of traders pursuant to Commission rules 17.00 and 17.01. Clearing member reports would therefore be generally unnecessary for the purpose of identifying large cleared positions. Lastly, clearing member reports would not normally assist in the identification of account aggregation issues. For exclusively self-cleared contracts, account aggregation issues may be analyzed by directly issuing appropriately worded special calls to traders for further position and identifying data pursuant to part 18 of the Commission's regulations. Based upon the foregoing reasons, proposed rule 16.00(c) provides that no clearing member reports need be submitted to the Commission for exclusively self-cleared contracts, unless the Commission determines otherwise.

VI. Conforming, Clarifying and Technical Amendments

The Commission has identified a number of other provisions and sets of provisions that should be revised to reconcile them with the substantive rules proposed herein, to update and better organize the layout of the reporting rules, or to correct certain non-substantive errors. These proposed amendments are categorized below by their respective parts.

A. Part 1 of the Commission's Regulations

Commission rule 1.3(c) defines clearing member in terms of a member of a contract market. Commission rule 1.3(d) defines a clearing organization in terms of an entity associated with a contract market. In conformity with the intent of this proposed rulemaking, the Commission is proposing to amend rules 1.3(c) and 1.3(d) to make specific reference to DTEFs.

B. Part 15 of the Commission's Regulations

The Commission is proposing to further amend rule 15.00, the definitional section for parts 15 through 21 of the Commission's regulations, to present the definitions contained in that section alphabetically. The Commission is proposing to enumerate the contract reporting levels and categories delineated in rule 15.03, for certain reporting levels and categories, in alphabetical order. The Commission is proposing to amend paragraph (a) of rule 15.05 to clarify that the provisions of that rule currently apply to all regulated transactions executed on or subject to the rules of DTEFs.[65] Since the thrust of rule 15.05 relates to the appointment of an agent for service of process on foreign brokers and foreign customers, the term foreign broker in proposed rule 15.00(g) has been defined to explicitly extend to transactions on DTEFs.

Commission rule 15.01 provides a list of the persons that may be required to report pursuant to parts 15 through 21 of the Commission's regulations. Proposed paragraph (a) of rule 15.01 clarifies that both designated contract markets, and when applicable DTEFs, are required to provide reports to the Commission pursuant to part 16, and that pursuant to this proposed rulemaking, reporting markets may be required to provide reports under part 17 if they list exclusively self-cleared contracts. Proposed paragraph (b) of rule 15.01 clarifies that part 17 applies to all clearing members and that part 21 may require reports from introducing brokers and traders in addition to FCMs, clearing members, and foreign brokers. Proposed paragraph (b) of rule 15.01 also deletes the reference to part 20 since that part is reserved and contains no operative provisions.

C. Part 16 of the Commission's Regulations

The current heading for part 16 only references contract markets. As proposed, the heading for part 16 would specifically refer to reporting markets. Current rule 16.07(b) incorrectly references rule 16.00(d)(1) as a provision that gives the Commission the authority to approve the form and manner of filing reports with the Commission. The correct reference, as provided in proposed rule 16.07(b), is Commission rule 16.01(d)(1). Paragraph (a) of current rule 16.01 refers to the total quantity of futures exchanged for commodities or for derivatives positions. Since exchanges of futures generate trading volume, proposed rule 16.01(a)(5) now refers to the total volume of futures exchanged for commodities or for derivatives positions instead of the total quantity of such transactions.

D. Part 17 of the Commission's Regulations

The Commission is proposing to conform the capitalization format of rule 17.00(b)(2) and 17.00(g)(2)(iv) with the format used in the other paragraphs of that rule, and to capitalize the word form when used to refer to Form 102 throughout the provisions of rules 17.01, 17.02, and 17.03. Proposed rule 17.01(f) clarifies that Form 102 is alternatively referred to as a report. Proposed rules 17.01(a), 17.01(b), and 17.01(d) provide the appropriate italicization format for each rule's introductory phrase. The proposed heading to part 17 and proposed rule 17.02 reflect the possibility that under the alternative reporting approach for exclusively self-cleared contracts, reporting markets may be required to file reports with the Commission on behalf of their clearing members. Proposed rule 17.01(a) also replaces the second instance of the term identifier with the term designator. Lastly, the Commission is proposing to amend the introductory text of rule 17.03 to correctly refer to paragraph (d) of that section.

E. Part 19 of the Commission's Regulations

As a result of the proposed alphabetization of rule 15.00, the Commission is proposing to amend paragraph (a) of rule 19.00 to correctly refer to the re-ordered sections defining the term reportable position in rule 15.00. The proposed amendment to rule 19.00(b) correctly refers to rule 19.01 instead of rule 19.10, which is inoperative and reserved. Lastly, paragraph (a) of rule 19.01 capitalizes the word form when used to refer to Form 204.

F. Part 21 of the Commission's Regulations

A proposed amendment to rule 21.01, which was last updated in 1983, extends the rule's requirement that each FCM and introducing broker file with the Commission upon special call the names and addresses of all persons who exercise trading control over a customer's account in commodity futures to all persons who also exercise trading control over a customer's account in commodity options. A proposed amendment to paragraph (d) of rule 21.03 replaces the phrase ''by telex or a similarly expeditious means of communication'' with the phrase ''by e-mail or a similarly expeditious means of communication''.

VII. Related Matters

A. Cost Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing new regulations under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of new regulations or to determine whether the benefits of the proposed regulations outweigh their costs. Rather, section 15(a) requires the Commission to ''consider the cost and benefits'' of the subject rules.

[65] *See* note 20, *supra*.

Section 15(a) further specifies that the costs and benefits of the proposed rules shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

Collectively, the proposed rules tend to reduce the aggregate burden associated with the reporting obligations of parts 15 through 21 of the Commissions regulations. The proposed contract reporting level of 750 contracts for 3-Year T-Notes, for example, is significantly higher than the default reporting level that would be applicable in the absence of Commission rulemaking or regulatory relief. Contract reporting levels trigger reporting obligations that permit the Commission to be aware of significant positions that may affect the integrity and efficiency of the marketplace. The information collected develops the Commission's understanding of the marketplace, and gives the Commission the opportunity to prevent the occurrence, and contain the effects, of financial disturbances. Based upon the staff's surveillance experience with 2-Year T-Notes, the liquidity of the securities underlying treasury futures and option contracts, and the securities available for delivery against 3-Year T-Notes, the Commission believes that a 3-Year T-Notes reporting level of 750 contracts will allow it to adequately protect market participants and the integrity of the marketplace, while limiting the regulatory burden of reporting.

With respect to transactions executed on or subject to the rules of DTEFs, the proposed rules merely clarify the existing reporting obligations of exchanges, intermediaries, and traders and are not intended to in any way alter their existing reporting obligations. The current language of Commission rule 37.2 reserves the applicability of parts 15 to 21 to DTEFs, but does so through incorporation by reference and without clarity. As part of the Commission's continuing effort to better implement the amendments introduced to the Act by the CFMA, the Commission has proposed amendments that define DTEFs directly into rules 15.00 to 15.04 and parts 16 through 21 without generally altering the present reporting obligations of DTEFs or their market participants. The Commission believes that the proposed amendments serve the public's interest by enhancing regulatory clarity.

The proposed amendments to rule 16.01 relating to block trades and contract volume recognize the growing importance and use of off-centralized market transactions in general, and block trades in particular. The proposed rules require all reporting markets to record the volume generated from block trades for each contract, and require designated contract markets to make that information readily available to the news media and the general public as a part of the total mix of market data publicly disseminated on a daily basis. In order to emphasize the obligation to disseminate market data in a manner that is both useful and accessible, the proposed rules would also require designated contract markets to publish integrated volume data, and present all market data in a format that would readily enable members of the news media and the general public to consider such data. The Commission believes that the format requirement would ensure that designated contract markets are fully aware of their present obligation to publicly disseminate market data in a user friendly manner. In addition, the integrated publication of volume data, along with the public dissemination of block trade volume data, would benefit market participants and the general public by facilitating their ability to effectively analyze the key determinants of market prices and market depth.

Pursuant to paragraphs (a) and (b) of rule 16.01, designated contract markets are presently required to publicly disseminate certain market data, including the volume generated from trades involving the exchange of futures for a commodity or for a derivatives position, on a daily basis. Commission rule 1.38(b) also requires designated contract markets to separately identify and mark all block trades. In addition, several designated contract markets publicly disseminate integrated volume data that separately accounts for contract volume generated from block trades. In light of this, the cost of compliance with the proposed amendments to rule 16.01 is likely to be minimal.

Finally, the Commission has proposed rules that concern exclusively self-cleared contracts. The proposed rules protect market participants and strengthen the financial integrity of the futures marketplace by shifting the reporting responsibilities of traders, who are also clearing members, onto regulated markets that are able to comply with routine reporting obligations. The reporting rules are presently designed to collect information from heavily intermediated markets that permit un-intermediated trading and clearing access only to well capitalized members. Intermediaries and clearing members typically are Commission registrants with vigorous internal controls, substantial resources, and extensive experience with regulatory compliance. Traders of exclusively self-cleared contracts, and in particular traders of retail oriented exclusively self-cleared contracts, would not in general have the resources or regulatory experience to comply with large trader reporting obligations as a matter of routine. In the absence of rulemaking or Commission relief, reporting obligations for exclusively self-cleared contracts would be placed on individual traders that do not have the ability to comply with those requirements. The Commission's proposed rulemaking addresses this deficiency and ensures that the Commission will receive the trading data it needs in a timely manner to protect market participants, the public, and the integrity of the futures marketplace.

After considering these factors, the Commission has determined to propose the revisions to parts 15, 16, 17, 18, 19, and 21 as set forth below. The Commission specifically invites public comment on its application of the criteria contained in section 15(a) of the Act for consideration. Commenters are also invited to submit any quantifiable data that they may have concerning the costs and benefits of the proposed rule with their comment letters.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their rules on small businesses. The Commission has previously determined that exchanges, futures commission merchants and large traders are not ''small entities'' for the purposes of the RFA.[66] The requirements related to the proposed amendments fall mainly on exchanges and FCMs. Similarly, foreign brokers and traders report only if carrying or holding large positions. In addition, these proposed amendments, collectively, tend to relieve regulatory burdens. Accordingly, the Chairman, on behalf of the Commission, hereby

[66] 47 FR 18618 (April 30, 1982).

certifies, pursuant to 5 U.S.C. 605(b), that the actions proposed to be taken herein will not have a significant economic impact on a substantial number of small entities.

C. The Paperwork Reduction Act

When publicizing proposed rules, the Paperwork Reduction Act (PRA)[67] imposes certain requirements on Federal agencies, including the Commission, in connection with conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission through these proposed rules solicits comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (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 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. The Commission has submitted the proposed rules and its associated information collection requirements to the Office of Management and Budget (OMB). The proposed rules are a part of two approved collections of information. The estimated burden associated with large trader reporting obligations (OMB Control No. 3038–0009) is as follows:

Average Burden Hour Per Response: .29.

Number of Respondents: 2,946.

Frequency of Response: Daily.

The estimated burden associated with the reporting obligations of the exchanges (OMB Control No. 3038–0012) is as follows:

Average Burden Hour Per Response: .5.

Number of Respondents: 12.

Frequency of Response: Daily.

Persons wishing to comment on the information which would be required by these proposed rules should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, 202.395.7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, 202.418.5160. Copies of the OMB-approved information collection package associated with the rulemaking may be obtained from the Desk Officer, Commodity Futures Trading Commission, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, 202.395.7340.

[67] Public Law 104–13 (May 13, 1995).

List of Subjects

17 CFR Part 15

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 16

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 17

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 18

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 19

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 21

Brokers, Commodity futures, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and, in particular, sections 4a, 4c, 4g, 4i, 5, 5a and 8a of the Act, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

2. Revise paragraphs (c) and (d) of § 1.3 to read as follows:

§ 1.3 Definitions.

* * * * *

(c) *Clearing member.* This term means any person who is a member of, or enjoys the privilege of clearing trades in his own name through, the clearing organization of a designated contract market or registered derivatives transaction execution facility.

(d) *Clearing organization.* This term means the person or organization which acts as a medium for clearing transactions in commodities for future delivery or commodity option transactions, or for effecting settlements of contracts for future delivery or commodity option transactions, for and between members of any designated contract market or registered derivatives transaction execution facility.

* * * * *

PART 15—REPORTS—GENERAL PROVISIONS

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

Authority: 7 U.S.C. 2, 5, 6, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19 and 21, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000); 5 U.S.C. 552 and 552(b).

4. Revise § 15.00 to read as follows:

§ 15.00 Definitions of terms used in parts 15 to 21 of this chapter.

As used in parts 15 to 21 of this chapter:

(a) *Cash or Spot*, when used in connection with any commodity, means the actual commodity as distinguished from a futures or option contract in such commodity.

(b) *Compatible data processing media* means data processing media approved by the Commission or its designee. The Commission hereby delegates, until the Commission orders otherwise, the authority to approve data processing media for data submissions to the Executive Director to be exercised by such Director or by such other employee or employees of such Director as designated from time to time by the Director. The Executive Director may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(c) *Customer* means ''customer'' (as defined in § 1.3(k)) and ''option customer'' (as defined in § 1.3(jj)).

(d) *Customer trading program* means any system of trading offered, sponsored, promoted, managed or in any other way supported by, or affiliated with, a futures commission merchant, an introducing broker, a commodity trading advisor, a commodity pool operator, or other trader, or any of its officers, partners or employees, and which by agreement, recommendations, advice or otherwise, directly or indirectly controls trading

done and positions held by any other person. The term includes, but is not limited to, arrangements where a program participant enters into an expressed or implied agreement not obtained from other customers and makes a minimum deposit in excess of that required of other customers for the purpose of receiving specific advice or recommendations which are not made available to other customers. The term includes any program which is of the character of, or is commonly known to the trade as, a managed account, guided account, discretionary account, commodity pool or partnership account.

(e) *Discretionary account* means a commodity futures or commodity option trading account for which buying or selling orders can be placed or originated, or for which transactions can be effected, under a general authorization and without the specific consent of the customer, whether the general authorization for such orders or transactions is pursuant to a written agreement, power of attorney, or otherwise.

(f) *Exclusively self-cleared contract* means a contract that in connection with its purchase or sale intermediaries are not permitted to handle customer funds.

(g) *Foreign broker* means any person located outside the United States or its territories that carries an account in commodity futures or commodity options on any designated contract market or registered derivatives transaction execution facility for any other person.

(h) *Foreign trader* means any trader (as defined in paragraph (o) of this section) who resides or is domiciled outside of the United States, its territories or possessions.

(i) *Guided account program* means any customer trading program which limits trading to the purchase or sale of a particular contract for future delivery of a commodity or a particular commodity option that is advised or recommended to the participant in the program.

(j) *Managed Account Program* means a customer trading program which includes two or more discretionary accounts traded pursuant to a common plan, advice or recommendations.

(k) *Open contracts* means ''open contracts'' (as defined in § 1.3(t)) and commodity option positions held by any person on or subject to the rules of a designated contract market or registered derivatives transaction execution facility which have not expired, been exercised, or offset.

(l) *Reportable position* means:

(1) For reports specified in parts 17, 18 and § 19.00(a)(2) and (a)(3) of this chapter, any open contract position that at the close of the market on any business day equals or exceeds the quantity specified in § 15.03 of this part in either:

(i) Any one future of any commodity on any one reporting market, excluding future contracts against which notices of delivery have been stopped by a trader or issued by the clearing organization of a reporting market; or

(ii) Long or short put or call options that exercise into the same future of any commodity, or long or short put or call options for options on physicals that have identical expirations and exercise into the same physical, on any one reporting market.

(2) For the purposes of reports specified in § 19.00(a)(1) of this chapter, any combined futures and futures-equivalent option open contract position as defined in part 150 of this chapter in any one month or in all months combined, either net long or net short in any commodity on any one reporting market, excluding futures positions against which notices of delivery have been stopped by a trader or issued by the clearing organization of a reporting market, which at the close of the market on the last business day of the week exceeds the net quantity limit in spot, single or in all-months fixed in § 150.2 of this chapter for the particular commodity and reporting market.

(m) *Reporting market* means a designated contract market and, unless determined otherwise by the Commission with respect to the facility or a specific contract listed by the facility, a registered derivatives transaction execution facility.

(n) *Special account* means any commodity futures or option account in which there is a reportable position.

(o) *Trader* means a person who, for his own account or for an account which he controls, makes transactions in commodity futures or options, or has such transactions made.

5. Revise paragraphs (a) and (b) in § 15.01 to read as follows:

§ 15.01 Persons required to report.

* * * * *

(a) Reporting markets—as specified in part 16, 17, and 21 of this chapter.

(b) Futures commission merchants, clearing members, foreign brokers, introducing brokers, and traders—as specified in parts 17 and 21 of this chapter.

* * * * *

6. Revise paragraph (b) in § 15.03 to read as follows:

§ 15.03 Reporting levels.

* * * * *

(b) The quantities for the purpose of reports filed under parts 17 and 18 of this chapter are as follows:

Commodity	Number of contracts
Agricultural:	
Cocoa	100
Coffee	50
Corn	250
Cotton	100
Feeder Cattle	50
Frozen Concentrated Orange Juice	50
Lean Hogs	100
Live Cattle	100
Milk, Class III	50
Oats	60
Rough Rice	50
Soybeans	150
Soybean Meal	200
Soybean Oil	200
Sugar No. 11	500
Sugar No. 14	100
Wheat	150
Broad-Based Security Indexes:	
Municipal Bond Index	300
S&P 500 Stock Price Index	1,000
Other Broad-Based Securities Indexes	200
Financial:	
30-Day Fed Funds	600
3-Month (13-Week) U.S. Treasury Bills	150
2-Year U.S. Treasury Notes	1,000
3-Year U.S. Treasury Notes	750
5-Year U.S. Treasury Notes	2,000
10-Year U.S. Treasury Notes	2,000
30-Year U.S. Treasury Bonds	1,500
1-Month LIBOR Rates	600
3-Month Eurodollar Time Deposit Rates	3,000
3-Month Euroyen	100
2-Year German Federal Government Debt	500
5-Year German Federal Government Debt	800
10-Year German Federal Government Debt	1,000
Goldman Sachs Commodity Index	100
Major Foreign Currencies	400
Other Foreign Currencies	100
U.S. Dollar Index	50
Natural Resources:	
Copper	100
Crude Oil, Sweet	350
Crude Oil, Sweet—No. 2 Heating Oil Crack Spread	250
Crude Oil, Sweet—Unleaded Gasoline Crack Spread	150
Gold	200
Natural Gas	200
No. 2 Heating Oil	250
Platinum	50
Silver Bullion	150
Unleaded Gasoline	150
Unleaded Gasoline—No. 2 Heating Oil Spread Swap	150
Security Futures Products:	
Individual Equity Security	1,000
Narrow-Based Security Index	200

Commodity	Number of contracts
Hedge Street Products	[1] 125,000
TRAKRS	[1] 50,000
All Other Commodities	25

[1] For purposes of part 17, positions in HedgeStreet Products and TRAKRS should be reported by rounding down to the nearest 1,000 contracts and dividing by 1,000.

7. Revise paragraphs (a) and (h) in § 15.05 to read as follows:

§ 15.05 Designation of agent for foreign brokers, customers of a foreign broker and foreign traders.

(a) For purposes of this section, the term ''futures contract'' means any contract for the purchase or sale of any commodity for future delivery traded or executed on or subject to the rules of any designated contract market or registered derivatives transaction execution facility; the term ''option contract'' means any contract for the purchase or sale of a commodity option, or as applicable, any other instrument subject to the Act pursuant to section 5a(g) of the Act, traded or executed on or subject to the rules of any designated contract market or registered derivatives transaction execution facility; the term ''customer'' means any person for whose benefit a foreign broker makes or causes to be made any futures contract or option contract; and the term ''communication'' means any summons, complaint, order, subpoena, special call, request for information, or notice, as well as any other written document or correspondence.

* * * * *

(h) The provisions of paragraphs (e), (f) and (g) of this section shall not apply to a designated contract market or registered derivatives transaction execution facility on which all transactions of foreign brokers, their customers or foreign traders in futures or option contracts are executed through, or the resulting transactions are maintained in, accounts carried by a registered futures commission merchant or introduced by a registered introducing broker subject to the provisions of paragraphs (a), (b), (c) and (d) of this section.

* * * * *

PART 16—REPORTS BY REPORTING MARKETS

8. Revise the heading of part 16 as set forth above.

9. The authority citation for part 16 is revised to read as follows:

Authority: 7 U.S.C. 6a, 6c, 6g, 6i, 7, 7a and 12a, unless otherwise noted.

10. In § 16.00, revise paragraphs (a) introductory text, (a)(1), (a)(5), and (b) introductory text; and add paragraph (c) to read as follows:

§ 16.00 Clearing member reports.

(a) *Information to be provided.* Each reporting market shall submit to the Commission, in accordance with paragraph (b) of this section, a report for each business day, showing for each clearing member, by proprietary and customer account, the following information separately for futures by commodity and by future, and, for options, by underlying futures contract for options on futures contracts or by underlying physical for options on physicals, and by put, by call, by expiration date and by strike price:

(1) The total of all long open contracts and the total of all short open contracts carried at the end of the day covered by the report, excluding from open futures contracts the number of contracts against which delivery notices have been stopped or against which delivery notices have been issued by the clearing organization of the reporting market;

* * * * *

(5) For futures, the quantity of the commodity for which delivery notices have been issued by the clearing organization of the reporting market and the quantity for which notices have been stopped during the day covered by the report.

(b) *Form, manner and time of filing reports.* Unless otherwise approved by the Commission or its designee, reporting markets shall submit the information required by paragraph (a) of this section as follows:

* * * * *

(c) *Exclusively self-cleared contracts.* Unless determined otherwise by the Commission, paragraph (a) of this section shall not apply to transactions involving exclusively self-cleared contracts.

* * * * *

11. In § 16.01 revise paragraphs (a), (b), (c), and (d) introductory text and add paragraph (e) to read as follows:

§ 16.01 Trading volume, open contracts, prices, and critical dates.

(a) *Trading volume and open contracts.* Each reporting market shall record for each business day the following information separately for futures by commodity and by future, and, for options, by underlying futures contract for options on futures contracts or by underlying physical for options on physicals, and by put, by call, by expiration date and by strike price:

(1) The option delta, where a delta system is used;

(2) The total gross open contracts, excluding from futures those contracts against which notices have been stopped;

(3) For futures, open contracts against which delivery notices have been stopped on that business day;

(4) The total volume of trading, excluding transfer trades or office trades;

(5) The total volume of futures exchanged for commodities or for derivatives positions which are included in the total volume of trading;

(6) The total volume of block trades which are included in the total volume of trading.

(b) *Prices.* Each reporting market shall record the following information separately for futures, by commodity and by future, and, for options, by underlying futures contract for options on futures contracts or by underlying physical for options on physicals, and by put, by call, by expiration date and by strike price:

(1) For the trading session and for the opening and closing periods of trading as determined by each reporting market:

(i) The lowest price of a sale or offer, whichever is lower, and the highest price of a sale or bid, whichever is higher, that the reporting market reasonably determines accurately reflect market conditions. If vacated or withdrawn, bids and offers shall not be used in making this determination. A bid is vacated if followed by a higher bid or price and an offer is vacated if followed by a lower offer or price.

(ii) If there are no transactions, bids, or offers during the opening or closing periods, the reporting market may record as appropriate:

(A) The first price (in lieu of opening price data) or the last price (in lieu of closing price data) occurring during the trading session, clearly indicating that such prices are the first and the last price; or

(B) Nominal opening or nominal closing prices which the reporting market reasonably determines accurately reflect market conditions, clearly indicating that such prices are nominal.

(2) The settlement price established by each reporting market or its clearing organization.

(3) *Additional information.* Each reporting market shall record the following information with respect to transactions in commodity futures and commodity options on that reporting market:

(i) The method used by the reporting market in determining nominal prices and settlement prices; and

(ii) If discretion is used by the reporting market in determining the opening and closing ranges or the settlement prices, an explanation that certain discretion may be employed by the reporting market and a description of the manner in which that discretion may be employed.

(c) *Critical dates.* Each reporting market shall report to the Commission for each futures contract the first notice date and the last trading date and for each option contract the expiration date in accordance with paragraph (d) of this section.

(d) *Form, manner and time of filing reports.* Unless otherwise approved by the Commission or its designee, reporting markets shall submit to the Commission the information specified in paragraphs (a)(1) through (a)(5), (b), and (c) of this section as follows:

* * * * *

(e) *Publication of recorded information.* (1) Designated contract markets shall make the information in paragraph (a) of this section readily available to the news media and the general public without charge, in a format that readily enables the consideration of such data, no later than the business day following the day to which the information pertains. The information in paragraphs (a)(4) through (a)(6) of this section shall be made readily available in a format that presents the information together.

(2) Designated contract markets shall make the information in paragraphs (b)(1) and (b)(2) of this section readily available to the news media and the general public, and the information in paragraph (b)(3) of this section readily available to the general public, in a format that readily enables the consideration of such data, no later than the business day following the day to which the information pertains.

(3) Registered derivatives transaction execution facilities shall comply with the publication of trading information requirement of section 5a(d)(5) of the Act and any Commission regulation adopted thereunder.

* * * * *

12. Revise § 16.06 to read as follows:

§ 16.06 Errors or omissions.

Unless otherwise approved by the Commission or its designee, reporting markets shall file corrections to errors or omissions in data previously filed with the Commission pursuant to §§ 16.00 and 16.01 in the format and using the coding structure and electronic data submission procedures approved in writing by the Commission or its designee.

13. In § 16.07, revise paragraphs (a) and (b) to read as follows:

§ 16.07 Delegation of authority to the Director of the Division of Market Oversight and the Executive Director.

* * * * *

(a) Pursuant to §§ 16.00(b) and 16.01(d), as applicable, the authority to determine whether reporting markets must submit data in hard copy, and the time that such data may be submitted where the Director determines that a reporting market is unable to meet the requirements set forth in the regulations;

(b) Pursuant to §§ 16.00(b)(1), 16.01(d)(1), and 16.06, the authority to approve the format, coding structure and electronic data transmission procedures used by reporting markets.

PART 17—REPORTS BY REPORTING MARKETS, FUTURES COMMISSION MERCHANTS, MEMBERS OF REPORTING MARKETS, AND FOREIGN BROKERS

14. Revise the heading of part 17 as set forth above.

15. The authority citation for part 17 is revised to read as follows:

Authority: 7 U.S.C. 6a, 6c, 6d, 6f, 6g, 6i, 7, 7a and 12a, unless otherwise noted.

16. In § 17.00, revise paragraphs (a)(1), (b)(2), and (g)(2)(iv); and add paragraph (i) to read as follows:

§ 17.00 Information to be furnished by futures commission merchants, clearing members and foreign brokers.

(a) * * *

(1) Each futures commission merchant, clearing member and foreign broker shall submit a report to the Commission for each business day with respect to all special accounts carried by the futures commission merchant, clearing member or foreign broker, except for accounts carried on the books of another futures commission merchant on a fully-disclosed basis. Except as otherwise authorized by the Commission or its designee, such report shall be made in accordance with the format and coding provisions set forth in paragraph (g) of this section. The report shall show each futures position, separately for each reporting market and for each future, and each put and call options position separately for each reporting market, expiration and strike price in each special account as of the close of market on the day covered by the report and, in addition, the quantity of exchanges of futures for commodities or for derivatives positions and the number of delivery notices issued for each such account by the clearing organization of a reporting market and the number stopped by the account. The report shall also show all positions in all futures months and option expirations of that same commodity on the same reporting market for which the special account is reportable.

* * * * *

(b) * * *

(2) *Accounts controlled by two or more persons*—Accounts that are subject to day-to-day trading control by two or more persons shall, together with other accounts subject to control by exactly the same persons, be considered a single account.

* * * * *

(g) * * *

(2) * * *

(iv) *Report date.* The format is YYYYMMDD, where YYYY is the year, MM is the month, and DD is the day of the month.

* * * * *

(i) *Exclusively self-cleared contracts.* Unless determined otherwise by the Commission, reporting markets that list exclusively self-cleared contracts shall meet the requirements of paragraphs (a) through (h) of this section, as they apply to trading in such contracts by all clearing members, on behalf of all clearing members.

* * * * *

17. In § 17.01, revise the introductory text and paragraphs (a), (b) introductory text, (d), (f) and (g); and add paragraph (h) to read as follows:

§ 17.01 Special account designation and identification.

When a special account is reported for the first time, the futures commission merchant, clearing member, or foreign broker shall identify the account to the Commission on Form 102, in the form and manner specified in § 17.02, showing the information in paragraphs (a) through (f) of this section.

(a) *Special account designator.* A unique identifier for the account, *provided*, that the same designator is assigned for option and futures reporting, and the designator is not changed or assigned to another account without prior approval of the Commission or its designee.

(b) *Special account identification.* The name, address, business phone, and for individuals, the person's job title and employer for the following:

* * * * *

(d) *Commercial use.* For futures or options, commodities in which positions or transactions in the account are associated with a commercial activity of the account owner in a related cash commodity or activity (*i.e.*,

those considered as hedging, risk-reducing, or otherwise off-setting with respect to the cash commodity or activity).

* * * * *

(f) *Reporting firms*. The name and address of the futures commission merchant, clearing member, or foreign broker carrying the account, and the name, title and business phone of the authorized representative of the firm filing the Form 102 and the date of the Form 102. The authorized representative shall sign the Form 102 or satisfy such other requirements for authenticating the report as instructed in writing by the Commission or its designee.

(g) *Form 102 updates*. If, at the time an account is in special account status and a Form 102 filed by a futures commission merchant, clearing member, or foreign broker is then no longer accurate because there has been a change in the information required under paragraph (b) of this section since the previous filing, the futures commission merchant, clearing member, or foreign broker shall file an updated Form 102 with the Commission within three business days after such change occurs.

(h) *Exclusively self-cleared contracts*. Unless determined otherwise by the Commission, reporting markets that list exclusively self-cleared contracts shall meet the requirements of paragraphs (a) through (g) of this section, as they apply to trading in such contracts by all clearing members, on behalf of all clearing members.

18. Revise § 17.02 to read as follows:

§ 17.02 Form, manner and time of filing reports.

Unless otherwise instructed by the Commission or its designee, the reports required to be filed by reporting markets, futures commission merchants, clearing members and foreign brokers under §§ 17.00 and 17.01 shall be filed as specified in paragraphs (a) and (b) of this section.

(a) *Section 17.00(a) reports*. Reports filed under § 17.00(a) shall be submitted through electronic data transmission procedures approved in writing by the Commission or its designee not later than 9 a.m. on the business day following that to which the information pertains. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

(b) *Section 17.01 reports*. For data submitted pursuant to § 17.01 on Form 102:

(1) On call by the Commission or its designee, identify the type of special account specified by items 1(a), 1(b), or 1(c) of Form 102, and the name and location of the person to be identified in item 1(d) on the Form 102, and submit such information by facsimile or telephone, in accordance with instructions by the Commission or its designee, on the same day that the special account in question is first reported to the Commission; and

(2) Submit a completed Form 102 within three business days of the first day that the special account in question is reported to the Commission in accordance with instructions by the Commission or its designee.

19. In § 17.03, revise the introductory text and paragraph (c) to read as follows:

§ 17.03 Delegation of authority to the Director of the Division of Market Oversight and to the Executive Director.

The Commission hereby delegates, until the Commission orders otherwise, the authority set forth in paragraphs (a) and (b) of this section to the Director of the Division of Market Oversight and the authority set forth in paragraphs (c) and (d) of this section to the Executive Director to be exercised by such Director or by such other employee or employees of such Director as designated from time to time by the Director. The Director of the Division of Market Oversight or the Executive Director may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

* * * * *

(c) Pursuant to § 17.01(f), the authority to determine whether to permit an authorized representative of a firm filing the Form 102 to use a means of authenticating the report other than by signing the Form 102 and, if so, to determine the alternative means of authentication that shall be used.

* * * * *

20. In § 17.04, revise paragraphs (a), (b)(1)(i), and (b)(2) to read as follows:

§ 17.04 Reporting omnibus accounts to the carrying futures commission merchant or foreign broker.

(a) Any futures commission merchant, clearing member or foreign broker who establishes an omnibus account with another futures commission merchant or foreign broker shall report to that futures commission merchant or foreign broker the total open long positions and the total open short positions in each future of a commodity and, for commodity options transactions, the total open long put options, the total open short put options, the total open long call options, and the total open short call options for each commodity options expiration date and each strike price in such account at the close of trading each day. The information required by this section shall be reported in sufficient time to enable the futures commission merchant or foreign broker with whom the omnibus account is established to comply with part 17 of these regulations and reporting requirements established by the reporting market.

(b) * * *

(1) * * *

(i) The positions represent transactions on a reporting market which requires long and short positions in the same future or option held in accounts for the same trader to be recorded and reported on a gross basis; or

* * * * *

(2) Include only the net long or net short positions of the trader if the positions represent transactions on a reporting market which does not require long and short positions in the same future or option held in accounts for the same trader to be recorded and reported on a gross basis.

* * * * *

PART 18—REPORTS BY TRADERS

21. The authority citation for part 18 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 12a and 19; 5 U.S.C. 552 and 552(b), unless otherwise noted.

22. In § 18.00 revise the introductory text to read as follows:

§ 18.00 Information to be furnished by traders.

Every trader who owns, holds or controls, or has held, owned or controlled, a reportable futures or options position in a commodity shall within one business day after a special call upon such trader by the Commission or its designee file reports to the Commission concerning transactions and positions in such futures or options. Reports shall be filed for the period of time that the trader held or controlled a reportable position and shall be prepared and submitted as instructed in the call. The report shall show for each day covered by the report the following information, as specified in the call, separately for each future or option and for each reporting market:

* * * * *

23. Revise § 18.05 to read as follows:

§ 18.05 Maintenance of books and records.

Every trader who holds or controls a reportable futures or option position shall keep books and records showing all details concerning all positions and transactions for future delivery in the commodity on all reporting markets, all positions and transactions in the commodity option, and all positions and transactions in the cash commodity, its products and byproducts and, in addition, commercial activities that the trader hedges in the commodity underlying the futures contract in which the trader is reportable, and shall upon request furnish to the Commission any pertinent information concerning such positions, transactions or activities.

(Approved by the Office of Management and Budget under control number 3038–0007)

PART 19—REPORTS BY PERSONS HOLDING BONA FIDE HEDGE POSITIONS PURSUANT TO § 1.3(Z) OF THIS CHAPTER AND BY MERCHANTS AND DEALERS IN COTTON

24. The authority citation for part 19 continues to read as follows:

Authority: 7 U.S.C. 6g(a), 6i and 12a(5), unless otherwise noted.

25. In § 19.00, revise paragraphs (a) and (b) introductory text to read as follows:

§ 19.00 General provisions.

(a) *Who must file series '04 reports.* The following persons are required to file series '04 reports:

(1) All persons holding or controlling futures and option positions that are reportable pursuant to § 15.00(l)(2) of this chapter and any part of which constitute bona fide hedging positions as defined in § 1.3(z) of this chapter;

(2) Merchants and dealers of cotton holding or controlling positions for futures delivery in cotton that are reportable pursuant to § 15.00(l)(1)(i) of this chapter, or

(3) All persons holding or controlling positions for future delivery that are reportable pursuant to § 15.00(l)(1) of this chapter who have received a special call for series '04 reports from the Commission or its designee. Filings in response to a special call shall be made within one business day of receipt of the special call unless otherwise specified in the call. For the purposes of this paragraph, the Commission hereby delegates to the Director of the Division of Market Oversight, or to such other person designated by the Director, authority to issue calls for series '04 reports.

(b) *Manner of reporting.* The manner of reporting the information required in § 19.01 is subject to the following:

* * * * *

26. In § 19.01, revise paragraph (a) introductory text to read as follows:

§ 19.01 Reports on stocks and fixed price purchases and sales pertaining to futures positions in wheat, corn, oats, soybeans, soybean oil, soybean meal or cotton.

(a) *Information required.* Persons required to file '04 reports under § 19.00(a)(1) or § 19.00(a)(3) of this chapter shall file CFTC Form 304 reports for cotton and Form 204 reports for other commodities showing the composition of the fixed price cash position of each commodity hedged including:

* * * * *

PART 21—SPECIAL CALLS

27. The authority for part 21 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 12a, 19 and 21; 5 U.S.C. 552 and 552(b), unless otherwise noted.

28. Revise § 21.01 to read as follows:

§ 21.01 Special calls for information on controlled accounts from futures commission merchants and introducing brokers.

Upon call by the Commission, each futures commission merchant and introducing broker shall file with the Commission the names and addresses of all persons who, by power of attorney or otherwise, exercise trading control over any customer's account in commodity futures or commodity options on any reporting market.

(Approved by the Office of Management and Budget under control number 3038–0009)

29. Revise the heading and introductory text of § 21.02 to read as follows:

§ 21.02 Special calls for information on open contracts in accounts carried or introduced by futures commission merchants, members of reporting markets, introducing brokers, and foreign brokers.

Upon special call by the Commission for information relating to futures or option positions held or introduced on the dates specified in the call, each futures commission merchant, member of a reporting market, introducing broker, or foreign broker, and, in addition, for option information, each reporting market, shall furnish to the Commission the following information concerning accounts of traders owning or controlling such futures or option positions, except for accounts carried on a fully disclosed basis by another futures commission merchant, as may be specified in the call:

* * * * *

30. Revise the heading and paragraphs (c), (d), (e) introductory text, and (f) of § 21.03 to read as follows:

§ 21.03 Selected special calls—duties of foreign brokers, domestic and foreign traders, futures commission merchants, introducing brokers, and reporting markets.

* * * * *

(c) Upon a determination by the Commission that information concerning accounts may be relevant information in enabling the Commission to determine whether the threat of a market manipulation, corner, squeeze, or other market disorder exists on any reporting market, the Commission may issue a call for information from a futures commission merchant or customer pursuant to the provisions of this section.

(d) In the event the call is issued to a foreign broker or foreign trader, its agent, designated pursuant to § 15.05 of this chapter, shall, if directed, promptly transmit calls made by the Commission pursuant to this section by electronic mail or a similarly expeditious means of communication.

(e) The futures commission merchant, introducing broker, or customer to whom the special call is issued must provide to the Commission the information specified below for the commodity, reporting market and delivery months or option expiration dates named in the call. Such information shall be filed at the place and within the time specified by the Commission.

* * * * *

(f) If the Commission has reason to believe that a futures commission merchant or customer has not responded as required to a call made pursuant to this section, the Commission in writing may inform the reporting market specified in the call and that reporting market shall prohibit the execution of, and no futures commission merchant, introducing broker, or foreign broker shall accept an order for, trades on the reporting market and in the months or expiration dates specified in the call for or on behalf of the futures commission merchant or customer named in the call, unless such trades offset existing open contracts of such futures commission merchant or customer.

* * * * *

Issued in Washington, DC, on December 7, 2005, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–23977 Filed 12–14–05; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–107722–00]

RIN–1545–AY22

Corporate Estimated Tax; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of public hearing.

SUMMARY: This document corrects the notice of public hearing (REG–107722–00) that was published in the **Federal Register** on Monday, December 12, 2005 (70 FR 73393), that relates to corporate estimated taxes.

FOR FURTHER INFORMATION CONTACT: Joseph P. Dewald, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of public hearing (REG–107722–00) that is the subject of this correction is under section 6655 of the Internal Revenue Code.

Need for Correction

As published, REG–107722–00 contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of public hearing (REG–107722–00) that was the subject of FR. Doc. 05–23872, is corrected as follows:

On page 73396, column 2, in the preamble, under the paragraph heading ''Comments and Public Hearing'', first full paragraph of the column, lines 1 and 2, the language ''A public hearing has been scheduled for February 22, 2006, beginning at 10'' is corrected to read ''A public hearing has been scheduled for March 15, 2006, beginning at 10''.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel. (Procedure and Administration).

[FR Doc. 05–24091 Filed 12–12–05; 3:14 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 155 and 157

46 CFR Part 162

[USCG–2004–18939]

RIN 1625–AA90

Pollution Prevention Equipment

AGENCY: Coast Guard, DHS.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking published in the **Federal Register** on November 3, 2005. The proposed rule would revise Coast Guard pollution prevention equipment regulations to make them consistent with new International Maritime Organization (IMO) guidelines and specifications issued under the International Convention for the Prevention of Pollution from Ships (MARPOL) Annex I.

FOR FURTHER INFORMATION CONTACT: For questions on this correction document, call LCDR George Grills, Systems Engineering Division (G–MSE–3), Office of Design and Engineering Standards, U.S. Coast Guard, telephone 202–267–6640.

SUPPLEMENTARY INFORMATION:

Need for Correction

The NPRM, as published, contained a phrase in the preamble and regulatory text that was inserted by error. This phrase could confuse the reader and needs to be deleted.

Correction of Publication

Accordingly, the publication on November 3, 2005, of the NPRM [USCG–2004–18939], FR Doc. 05–21573, is corrected as follows:

1. On page 67068, in the first column, under the heading ''Proposed Action'', in the tenth line of the third bullet, following the word ''drift'', remove the phrase, ''must be limited''.

2. On page 67073, in the first column, in paragraph (e), following the word ''drift'' on the second line, remove the phrase ''must be limited;'' in the third line.

Dated: November 30, 2005.

Steve Venckus,

Chief, Office of Regulations and, Administrative Law, Office of the Judge Advocate General, U.S. Coast Guard.

[FR Doc. 05–24067 Filed 12–14–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2005–ME–0003; A–1–FRL–8008–8]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Architectural and Industrial Maintenance (AIM) Coatings Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision establishes requirements to reduce volatile organic compound (VOC) emissions from architectural and industrial maintenance coatings. The intended effect of this action is to propose approval of these requirements. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before January 17, 2006.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2005–ME–0003 by one of the following methods:

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

2. Agency Web site: *http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, will be replaced by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov.* On November 28, 2005, when that occurs, you will be redirected to that site to access the docket EPA–R01–OAR–2005–ME–0003 and submit comments. Follow the on-line instructions for submitting comments.

3. E-mail: *conroy.dave@epa.gov.*

4. Fax: (617) 918–0661.

5. Mail: ''RME ID Number R01–OAR–2005–ME–0003,'' David Conroy, Chief, Air Programs Branch, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

6. Hand Delivery or Courier. Deliver your comments to: David Conroy, Chief, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One

Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID Number R01–OAR–2005–ME–0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regional Material in EDocket (RME), regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anne Arnold, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617) 918–1047, *arnold.anne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How can I get copies of this document and other related information?

In addition to the publicly available docket materials available for inspection electronically in Regional Material in EDocket, and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section above, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

B. What should I consider as I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Rulemaking Information

This section is organized as follows:

A. What action is EPA taking?
B. What are the requirements of Maine's new regulation?
C. Why is EPA proposing to approve this regulation?
D. What is the process for EPA to approve this SIP revision?

A. What action is EPA taking?

EPA is proposing to approve Maine's Chapter 151, ''Architectural and Industrial Maintenance (AIM) Coatings,'' and to incorporate this regulation into the Maine SIP.

B. What are the requirements of Maine's new regulation?

Maine's Chapter 151 applies to any person who supplies, sells, offers for sale, or manufactures, any architectural coating for use within the State of Maine and to any person who applies, or solicits the application of, any architectural coating within the State of Maine. The rule includes VOC content limits for several categories of architectural coatings such as roof coatings, swimming pool coatings, and traffic marking coatings. Aerosol coating products, as well as architectural coatings sold in a container with a volume of one liter or less, are exempt from the regulation.

In addition, Chapter 151 includes the appropriate testing and recordkeeping requirements to ensure compliance with the specified performance standards. Specifically, the rule requires the use of EPA test methods and test procedures adopted by ASTM, South Coast AQMD, and Bay Area AQMD. The rule also allows the use of alternative test methods that have been approved by the Maine DEP and EPA. Finally, the rule requires compliance with the specified VOC content limits by January 1, 2006 (with one exception).[1] Coatings manufactured prior to January 1, 2006, however, may be sold, supplied, offered for sale, or applied after January 1, 2006, so long as the coating complied with the standards in effect at the time the coating was manufactured.

C. Why is EPA proposing to approve this regulation?

EPA has evaluated Maine's Chapter 151 and has found that this regulation is generally consistent with EPA guidance and the Ozone Transport Commission (OTC) model rule for AIM coatings. The specific requirements of the regulation and EPA's evaluation of these requirements are detailed in a

[1] The rule includes both a January 1, 2006 and a January 1, 2011 emission limit for varnishes.

memorandum dated November 10, 2005, entitled ''Technical Support Document—Maine—Architectural and Industrial Maintenance Coatings Regulation'' (TSD). The TSD and Maine's Chapter 151 are available in the docket supporting this action.

The OTC has developed model rules for several VOC source categories, and the OTC states, including Maine, have signed a memorandum of understanding (MOU) committing to adopt these model rules. One of the categories for which a model rule has been developed is architectural coatings. (See ''OTC Model Rule for Architectural and Industrial Maintenance Coatings,'' issued March 28, 2001.)

Several other OTC states have also recently adopted an AIM coatings rule based on the OTC model rule, and EPA has already approved some of these states' rules.[2] The OTC model rule and Maine's rule include emission limits that are at least as stringent as, and in some cases more stringent than, EPA's AIM coatings rule.[3]

It should be noted, however, that there are two cases where the emission limits in Maine's Chapter 151 differ from the limits in the OTC model rule. Specifically, the OTC rule includes a 350 g VOC per liter emission limit for varnishes. In contrast, Maine's rule includes two emission limits for varnishes: (1) a 450 g VOC per liter emission limit with a January 1, 2006 compliance date; and (2) a 350 g VOC per liter limit with a January 1, 2011 compliance date. Maine's emission limits are acceptable, however, because Maine's 2006 limit for varnishes is consistent with EPA's limit for varnishes. Also, the emission limits for stains in Maine's rule differ from those in the OTC model rule. The OTC rule includes a 250 g VOC per liter limit for stains. Maine's rule includes an emission limit of 550 g VOC per liter for interior wood clear and semitransparent stains and a 250 g VOC per liter limit for all other stains. Thus, Maine's rule is less stringent for interior wood clear and semitransparent stains than the OTC rule. Maine's 550 g VOC per liter limit is, however, acceptable since it is consistent with the limit for interior wood clear and semitransparent stains in EPA's rule.

EPA is aware that concerns have been raised about the achievability of VOC content limits of some of the product categories under the Maine AIM coatings rule. Although we are approving this rule today, the Agency is concerned that if the rule's limits make it impossible for manufacturers to produce coatings that are desirable to consumers, there is a possibility that users may misuse the products by adding additional solvent, thereby circumventing the rule's intended VOC emission reductions. We intend to work with Maine and manufacturers to explore ways to ensure that the rule achieves the intended VOC emission reductions, and we intend to address this issue in evaluating the amount of VOC emission reduction credit attributable to the rule. EPA has issued an advanced notice of proposed rulemaking to solicit comments, data, and information for determining the emission reductions achieved from architectural coating rules. (See 70 FR 51694; August 31, 2005.)

Maine did not submit its Chapter 151 SIP submittal to meet any specific control requirements under the Clean Air Act. However, subsequently, on June 9, 2005, Maine submitted its 5 percent increment of progress plan which relies on reductions from Chapter 151. In today's action, EPA is proposing to approve Chapter 151 because it will strengthen Maine's SIP, and we are not deciding what level of emissions reductions the rule will achieve. EPA will evaluate the reductions Maine is claiming from Chapter 151 in its 5 percent increment of progress plan when the Agency takes action on that plan.

D. What is the process for EPA to approve this SIP revision?

EPA is proposing to approve Maine's AIM coatings rule and is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this proposal, or by submitting comments electronically, by mail, or through hand delivery/courier following the directions in the **SUPPLEMENTARY INFORMATION**, I. General Information section of this proposal.

III. Proposed Action

EPA is proposing to approve Maine's Chapter 151, ''Architectural and Industrial Maintenance (AIM) Coatings,'' and to incorporate this regulation into the Maine SIP.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus

[2] For example, EPA approved Pennsylvania's AIM coatings rule on November 23, 2004 (69 FR 68080), and New York's AIM rule on December 13, 2004 (69 FR 72118).

[3] See ''National Volatile Organic Compound Emission Standards for Architectural Coatings,'' 40 CFR Part 59, Subpart D.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 5, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 05–24076 Filed 12–14–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket No. PHMSA–2005–22642; Notice 1]

RIN 2137–AE09

Pipeline Safety: Design and Construction Standards To Reduce Internal Corrosion in Gas Transmission Pipelines

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes regulations on the control of internal corrosion when designing and constructing new and replaced gas transmission pipelines. The proposed rule would require an operator to take steps in design and construction to reduce the risk that liquids collecting within the pipeline could result in failures because of internal corrosion. These changes would ease steps an operator must take in operating and maintaining the pipeline to minimize internal corrosion.

DATES: Anyone interested in filing written comments on the rule proposed in this document must do so by February 13, 2006. PHMSA will consider late filed comments so far as practicable.

ADDRESSES: Comments should reference Docket No. PHMSA–2005–22642 and may be submitted in the following ways:

- *DOT Web Site: http://dms.dot.gov.* To submit comments on the DOT electronic docket site, click ''Comment/Submissions,'' click ''Continue,'' fill in the requested information, click ''Continue,'' enter your comment, then click ''Submit.''
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* DOT Docket Management System; 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.
- *E-Gov Web Site: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Instructions: You should identify the docket number, PHMSA–2005–22642, at the beginning of your comments. If you submit your comments by mail, you should submit two copies. If you wish to receive confirmation that PHMSA received your comments, you should include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov,* and may access all comments received by DOT at *http://dms.dot.gov* by performing a simple search for the docket number. Note: All comments will be posted without changes or edits to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading in the Regulatory Analyses and Notices section of the Supplemental Information.

FOR FURTHER INFORMATION CONTACT: Barbara Betsock by phone at (202) 366–4361 or by fax at (202) 366–4566, or by e-mail at *barbara.betsock@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Internal Corrosion

Corrosion can occur on the interior wall of a steel pipeline when liquid gathers within the pipeline. Whether corrosion occurs in these circumstances depends on the nature and amount of contaminants inside the pipeline and the operating conditions of the pipeline.

Current Regulations

Current pipeline safety regulations found in 49 CFR part 192 require an operator to take actions to address internal corrosion in operating and maintaining a gas transmission pipeline. An operator must include the details of its corrosion program in procedural manuals and carry out the program. Among the actions that an operator must take to prevent corrosion are the use of inhibitors in the gas, the use of cleaning pigs, the removal of liquids and solids from drips, and monitoring the contaminants. When an operator discovers internal corrosion, an operator must take extra steps such as using coupons to check for corrosion to prevent internal corrosion-induced failure. Besides these operation and maintenance (O&M) requirements, an operator must design and construct pipe installed since 1994 to allow the passage of internal inspection tools, commonly known as ''pigs''. Therefore, all pipeline installed since 1994 allow the use of cleaning pigs.

On December 15, 2003, we issued regulations on integrity management programs for gas transmission pipelines. These regulations are found at 68 FR 69816. Specifically, an operator must include within its integrity management program a means to discover whether internal corrosion impacts the integrity of its pipeline. The means may include internal inspection or hydrostatic testing. Where pipeline design does not allow the use of pigs, internal corrosion direct assessment (ICDA) is the likely choice. The operator must then address any corrosion found.

To prepare for ICDA, an operator must evaluate whether the design and construction of the pipeline contributes to the risk of internal corrosion. These design and construction features include low points in which liquids may gather, such as sags, drips, inclines, valves, manifolds, dead-legs, and traps; elevation profile; and pipe diameter. An operator combines information about design and construction with O&M history such as places where cleaning pigs have not been used, patterns of gas quality, and the range of expected gas velocities. An operator uses this analysis to decide where to excavate and examine the line for internal corrosion.

Reasons for Regulation

Internal corrosion has been one of the three leading causes of reportable incidents in gas transmission pipelines for the past five years, both in percentage of incidents and their consequences. In fact, in 2003 and 2004,

internal corrosion caused more property damage than the other two most frequent causes, third-party excavation damage and external corrosion, combined. Specifically, internal corrosion caused $14.9 million in property damage in 2003 versus $11.9 million in damage attributable to external corrosion or third-party excavation damage. In 2004, internal corrosion caused $4.9 million in damage versus $4.0 million for the other two causes combined.

There is an increasing demand for natural gas. As producers tap new sources, there is a possibility the nature and amount of contaminants in the gas will vary. To ensure safe and reliable delivery of gas, pipeline operators must be vigilant in preventing internal corrosion and monitoring its impact when it occurs. Early planning for corrosion control at the design and construction stage would simplify the O&M actions needed later for corrosion control.

The integrity management regulations require added O&M steps to control internal corrosion. Designing and constructing pipelines with internal corrosion control in mind would ease integrity management assessments whether done by internal inspection or ICDA. Planning at the design and construction stage would also simplify actions needed to address internal corrosion during O&M. There are two industry standards for considering internal corrosion control during design and construction. These are the American Society of Mechanical Engineers (ASME) code for gas piping (*ASME B31.8, Gas Transmission and Distribution Piping Systems*) and the American Gas Association's *Guide for Gas Transmission and Distribution Piping Systems.* These standards already provide guidance to operators. However, clear performance-based design and construction standards for internal corrosion control will aid operators in complying with the recent integrity management regulations as well as the existing O&M requirements.

Finally, in its report on the gas transmission pipeline accident that occurred in 2000 near Carlsbad, New Mexico, the National Transportation Safety Board (NTSB) described physical features that promoted internal corrosion of the line. There were low points just upstream of where the pipeline crossed the Pecos River. The original construction of the line included a drip installed upstream of these low points to prevent liquid from gathering in the low points. At some point, the operator modified the line to allow the use of cleaning pigs upstream of the Pecos River. The operator placed the equipment used to remove cleaning pigs at the valve upstream of the drip. The NTSB concluded residue clogged the drip allowing liquids to flow past the drip and settle in the low points at the river crossing. The NTSB investigation after the pipeline ruptured at the low points revealed severe internal corrosion at the site. The line where the cleaning pigs had been used upstream did not experience internal corrosion needing repair. Noting the lack of Federal design and construction standards aimed at internal corrosion, the NTSB recommended the Department change its regulations:

> Revise 49 *Code of Federal Regulations* part 192 to require that new or replaced pipelines be designed and constructed with features to mitigate internal corrosion. At a minimum, such pipelines should (1) be configured to reduce the opportunity for liquids to accumulate, (2) be equipped with effective liquid removal features, and (3) be able to accommodate corrosion monitoring devices at locations with the greatest potential for internal corrosion. (P–03–1).

We agree there should be Federal standards to address internal corrosion at the design and construction stage.

Statutory Considerations

PHMSA has broad authority to issue safety standards on the design, construction, operation, replacement, and maintenance of gas transmission pipelines. This authority is in 49 U.S.C. 60102(a). Under 49 U.S.C. 60104, a design and construction standard may not apply to a pipeline existing when we issue the standard. Therefore, this proposal imposes design and construction requirements only on new and replaced pipe and components. The proposal does require an operator to evaluate the potential impact on existing pipelines by upstream changes made to the pipeline and take actions to address the impact. However, evaluating and addressing impacts is an O&M need rather than a design and construction standard. The statute allows PHMSA to regulate O&M for existing pipelines.

Under 49 U.S.C. 60102(b), a gas pipeline safety standard must be practicable and designed to meet the need for gas pipeline safety and for protection of the environment. To do this, PHMSA must consider several factors in issuing a safety standard. These factors include the relevant available pipeline safety and environmental information, the appropriateness of the standard for the type of pipeline, the reasonableness of the standard, and reasonably identifiable or estimated costs and benefits. PHMSA has considered these factors in developing this proposed rule and provides its analysis in the preamble. PHMSA must also consider any comments received from the public and any comments and recommendations of the Technical Pipeline Safety Standards Committee (Committee). The Committee discussed the ideas for this proposal following a briefing at its meeting on June 15, 2005. The transcript of, and briefing materials for, the meeting are in the DOT DMS Docket RSPA–98–4470. PHMSA considered the Committee discussion in developing this proposed rule. This document seeks public comment on the proposed rule; the Committee will formally consider it in a future meeting. PHMSA will address the public comments and the Committee's recommendations when the agency prepares a final rule.

The Proposed Rule

The proposed rule would add a new section to subpart I—Requirements for Corrosion Control in 49 CFR part 192. The new section, § 192.476 would require an operator to address internal corrosion risk when designing and constructing gas transmission pipelines.

Proposed paragraph (a) provides a performance test for internal corrosion prevention measures in design and construction. The test is whether the design and construction choices include measures to reduce the risk that liquid will collect inside the pipe. The proposed rule would require an operator to use measures that include, at the least, arrangement to avoid collection of liquids and the use of effective liquid removal equipment. If an operator is unable to avoid low spots, an operator would explain why and identify the alternative measures to reduce the risk. There may be cases in which the design avoids low spots, but during construction the operator finds that it cannot avoid low spots. In this case, the operator would document the ''as built'' condition and the alternative measures used.

Proposed paragraph (b) provides a performance test for design and construction measures to check any internal corrosion that occurs. The test is whether the design and construction choices include measures to reduce the risk of internal corrosion. The design must allow for use of corrosion detection equipment.

These design and construction requirements would apply to all new construction and to replaced pipe and components. With one limited exception, application to replaced pipe would be the same as the rule on designing to allow the passage of

instrumented internal inspection tools. PHMSA clarified the meaning of replaced pipe in the final rule published in the **Federal Register** on June 28, 2004 (69 FR 36024). The exception occurs when replaced pipe changes the physical features of an existing downstream pipeline. Proposed paragraph (c) clarifies that an operator must consider the impact of line changes on internal corrosion risks and plan for these. Proposed paragraph (c) would not require an operator to rebuild the downstream pipeline to remove low points, but would require an operator to consider whether it should install liquid removal equipment or tools to monitor corrosion. After analysis, an operator may decide O&M measures would adequately address the impacts of the changes upstream.

Paragraph (d) would require an operator to record the decisions it makes about internal corrosion control when designing and constructing pipelines. The operator would have to explain its reasons for the decisions and justify variance. For example, if an operator did not use equipment to remove liquids in designing a pipeline, the operator would have to explain why the use of the equipment would be impracticable. Recording reasons for decisions fosters better decisionmaking and will provide needed information about safety features of the line in the future.

Regulatory Analyses and Notices

Privacy Act Statement

Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR19477) or you may visit *http://dms.dot.gov.*

Executive Order 12866 and DOT Policies and Procedures

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not subject to review by the Office of Management and Budget. This proposed rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), PHMSA must consider whether rulemaking actions would have a significant economic impact on a substantial number of small entities. This proposed rule would affect operators of gas transmission pipelines and onshore gas gathering pipelines. There is not a substantial number of small entities which operate these lines. PHMSA expects the costs of compliance with the proposed rule would be small. PHMSA concludes that this proposed rule would not have a significant economic impact on any small entity.

PHMSA invites public comment on the number of small entities this proposed rule would impact.

Executive Order 13175

PHMSA has analyzed this proposed rulemaking according to Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Because the proposed rulemaking would not significantly or uniquely affect the communities of the Indian tribal governments nor impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Paperwork Reduction Act

This proposed rule would affect information collection that OMB has approved under Control Numbers 2137–0049 (recordkeeping under 49 CFR part 192). Operators of gas transmission pipelines must keep records to show the adequacy of corrosion control measures. In addition, they must keep construction records to make them available to individuals operating and maintaining the pipeline. The proposed rule may require some added effort to document decisions about internal corrosion made during design and construction. Because of existing recordkeeping needs and prudent business practice, PHMSA estimates the added burden hours will be nominal. PHMSA invites comments on this estimate.

Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the proposed rulemaking.

National Environmental Policy Act

PHMSA has analyzed the proposed rulemaking for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the proposed rulemaking would require limited physical change or other work that would disturb pipeline rights-of-way, PHMSA has preliminarily determined the proposed rulemaking is unlikely to affect the quality of the human environment significantly. An environmental assessment document is available for review in the docket. PHMSA will make a final determination on environmental impact after reviewing the comments to this proposal.

Executive Order 13132

PHMSA has analyzed the proposed rulemaking according to Executive Order 13132 (''Federalism''). The proposed rule does not have a substantial direct effect 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. The proposed rule does not impose substantial direct compliance costs on State and local governments. The pipeline safety law prohibits State safety regulation of interstate pipelines. This proposed regulation would not preempt state law for intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13211

Transporting gas impacts the nation's available energy supply. However, this proposed rulemaking is not a ''significant energy action'' under Executive Order 13211. It also is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, the Administrator of the Office of Information and Regulatory Affairs has not identified this proposed rule as a significant energy action.

List of Subjects in 49 CFR Part 192

Internal corrosion, design and construction, pipeline safety.

For the reasons provided in the preamble, PHMSA proposes to amend 49 CFR Part 192 as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

2. Add § 192.476 to read as follows:

§ 192.476 Internal corrosion control: Design and construction.

(a) *Avoiding liquids.* An operator must design and construct each new transmission line and each replacement

of line pipe, valve, fitting, or other line component in a transmission line to reduce the risk that liquids will collect in the line. At a minimum, unless an operator shows that it is impracticable or unnecessary to do so, an operator must:

(1) Configure new pipeline or replacement of line pipe, valve, fitting, or other line component to reduce the risk that liquids will collect in the line; and

(2) Equip the new pipeline or replacement pipe with effective liquid removal features.

(b) *Monitoring.* An operator must design and construct each new transmission line and each replacement of line pipe, valve, fitting, or other line component in a transmission line to reduce the risk of internal corrosion. At a minimum, unless an operator shows that it is impracticable or unnecessary to do so, an operator must use pipeline design and construction that allows use of corrosion monitoring devices at locations with significant potential for internal corrosion.

(c) *Change to existing system.* An operator must evaluate the impact that new or replaced line pipe, valve, fitting, or other line component may have on internal corrosion risk to the downstream portion of an existing pipeline and use equipment to remove liquids and to monitor corrosion as appropriate.

(d) *Records.* An operator must document the design and construction decisions related to internal corrosion. Documentation must include the reasons, and any engineering analysis, for each decision.

Issued in Washington, DC, on December 12, 2005.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 05–24063 Filed 12–12–05; 1:29 pm]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 192 and 195

[Docket No. PHMSA–04–18938]

RIN 2137–AE07

Integrity Management: Program Modifications and Clarifications—Request for Comments

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: PHMSA proposes revisions to the current Pipeline Safety Regulations for Pipeline Integrity Management in High Consequence Areas. The revisions address a petition from the hazardous liquid pipeline industry. The revisions are to: allow more flexibility in reassessment intervals for hazardous liquid pipelines by adding an eight-month window to the five-year time frame for operators to complete reassessment; and require both hazardous liquid pipeline and gas transmission pipeline operators to notify PHMSA whenever they reduce pipeline pressure to make a repair and to provide reasons for pressure reduction. Another notification, including reasons for repair delay, would be required when a pressure reduction exceeds 365 days.

Also, PHMSA proposes to correct existing provisions for calculating a pressure reduction when making an immediate repair on a hazardous liquid pipeline. The proposed correction would allow operators to use another acceptable method to calculate reduced operating pressure when a specified formula is not applicable or results in a calculated pressure higher than operating pressure.

Finally, PHMSA seeks the submittal of engineering analyses and technical data. These submittals are to provide the basis for modifying the required time periods for remediating certain conditions found during a hazardous liquid pipeline integrity assessment. PHMSA will use this data to evaluate the scope and scale of repair issues to develop an accurate basis for determining if any additional flexibility is needed in the repair schedules.

DATES: Interested persons may submit written comments on the proposed regulatory changes by February 13, 2006. Interested persons may submit written engineering analysis and technical data by April 14, 2006. Late-filed comments will be considered to the extent possible.

ADDRESSES: Comments should reference Docket No. PHMSA–04–18938 and may be submitted in the following ways:

- DOT Web site: *http://dms.dot.gov.* To submit comments on the DOT electronic docket site, click ''Comment/Submissions,'' click ''Continue,'' fill in the requested information, click ''Continue,'' enter your comment, then click ''Submit.''
- Fax: 1–202–493–2251.
- Mail: Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: DOT Docket Management System, Room PL–401 on the plaza of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- E-Gov Web site: *http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Instructions: You should identify docket number PHMSA–04–18938 at the beginning of your comments. If you submit your comments by mail, you should send two copies. If you wish to receive PHMSA's confirmation receipt of your comments, you should include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov,* and may access all comments received by DOT at *http://dms.dot.gov* by performing a simple search for the docket number. **Note:** All comments will be posted without changes or edits to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Section V, Regulatory Analyses and Notices, of the **SUPPLEMENTARY INFORMATION**.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (70 FR 19477) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Shauna Turnbull by phone at (202) 366–3731 or via e-mail at *shauna.turnbull@dot.gov.* For questions on technical issues, contact Mike Israni at (202) 366–4571 or via e-mail at *mike.israni@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Statutory and Regulatory Requirements

The Nation's existing pipeline infrastructure, much of which is over 50 years old, requires regular safety and environmental reviews to ensure its reliability. To address several statutory mandates and National Transportation Safety Board (NTSB) recommendations on actions to improve pipeline safety, PHMSA [1] issued Integrity Management

[1] The former Research and Special Programs Administration (RSPA) was the entity responsible for issuing the hazardous liquid pipeline and gas transmission pipeline integrity management program regulations. RSPA divided into two new agencies on February 20, 2005. The newly formed PHMSA assumed responsibility for pipeline safety and hazardous materials management regulatory oversight.

Program (IMP) regulations for operators of hazardous liquid pipelines with more than 500 miles of pipeline (65 FR 75378; Dec. 1, 2000). PHMSA finalized the regulation's repair criteria provisions on January 14, 2002 (67 FR 1650), and extended the IMP regulations to operators with fewer than 500 miles of hazardous liquid pipeline on January 16, 2002 (67 FR 2136). These regulations are found at 49 CFR 195.452.

During development of proposed IMP requirements for operators of gas transmission pipelines, Congress passed the Pipeline Safety Improvement Act of 2002, subsequently codified at 49 U.S.C. 60101 *et seq.* Section 60109 required issuance of regulations by December 17, 2003, prescribing standards for a gas transmission pipeline operator's adoption and implementation of an IMP. The statute also prescribed minimum requirements to be included in these programs.

PHMSA issued IMP regulations for gas transmission pipelines on December 15, 2003. These regulations are found in 49 CFR Part 192, Subpart O. Both the hazardous liquid pipeline and gas transmission pipeline IMP regulations require operators to continually assess, evaluate, repair, and validate through comprehensive analysis, integrity of pipeline segments in areas where a leak or rupture would do the most damage, such as in populated and environmentally sensitive areas. These areas are called ''High Consequence Areas'' (HCAs).

PHMSA has broad authority under 49 U.S.C. 60102 to issue regulations applying to design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. The IMP requirements were issued under this authority and addressed the following statutory mandates:

- 49 U.S.C. 60109(a)—to prescribe standards establishing criteria for identifying gas pipeline facilities located in high-density population areas and hazardous liquid pipeline facilities that cross waters where a substantial likelihood of commercial navigation exists, located in a high-density population area, or in an area unusually sensitive to environmental damage (USAs);
- 49 U.S.C. 60102(f)(2)—to prescribe additional standards requiring the periodic inspection of pipelines in USAs and high-density population areas;
- 49 U.S.C. 60102(j)—to survey and assess the effectiveness of emergency flow restricting devices (EFRD) and other procedures, systems, and equipment used to detect and locate hazardous liquid pipeline ruptures and to prescribe regulations on the circumstances where a hazardous liquid pipeline operator must use an EFRD or similar equipment; and
- 49 U.S.C. 60109(c)—to issue regulations prescribing standards to direct gas transmission pipeline operators to conduct a risk analysis and adopt and implement an integrity management program.

The proposed revisions in this NPRM simply modify several of the requirements in the hazardous liquid pipeline and gas transmission pipeline IMP regulations.

Also, 49 U.S.C. 60109(b) requires a pipeline safety standard to be practicable and designed to meet the need for environmental safety and protection. Pursuant to 60109(b)(2), PHMSA considered many factors in issuing revisions proposed in this NPRM. PHMSA must also consider comments received from the public along with comments and recommendations from the Technical Hazardous Liquid Pipeline and Technical Pipeline Safety Standards Committees as appropriate. PHMSA will address public comments and advisory committee comments when a final rule is prepared on these proposed revisions.

Hazardous Liquid Pipeline IMP Overview

Hazardous liquid pipeline IMP regulations apply to any hazardous liquid or carbon dioxide pipeline that could affect an HCA. Hazardous liquid pipeline HCAs are defined as populated areas, areas unusually sensitive to environmental damage, and commercially navigable waterways. Among other specifications, the regulations require operators to conduct a baseline assessment and periodically evaluate the integrity of each pipeline segment that could affect an HCA. Operators must also remediate, and have a schedule for evaluation and remediation of, anomalous conditions discovered from these assessments. For certain conditions, the regulations prescribe time frames for an operator to remediate the defect. These conditions are categorized into immediate, 60-day, or 180-day repair conditions.

Gas Transmission Pipeline IMP Overview

Gas transmission pipeline IMP regulations apply to gas transmission pipelines located in HCAs. A gas transmission pipeline HCA is defined by either of two methods: (a) a Class 3 or 4 location and any area outside a Class 3 or 4 location where the Potential Impact Radius is greater than 660 feet (200 meters), and the area within a Potential Impact Circle contains 20 or more buildings intended for human occupancy; or (b) an identified site, which is an area meeting one of three subcriteria:

(1) An outside area or open structure occupied by 20 or more people at least 50 days a year (days need not be consecutive);

(2) A building occupied by 20 or more people on at least 5 days a week for 10 weeks in a year (days and weeks need not be consecutive); or

(3) The area within a Potential Impact Circle containing 20 or more buildings intended for human occupancy (unless the exception in method (a) applies).

Gas transmission pipeline operators must complete a baseline assessment and conduct continual integrity assessment of pipeline segments in HCAs and address all anomalous conditions discovered. An operator must remediate anomalies according to a schedule prioritizing conditions for evaluation and remediation. Time frames are specified for certain conditions, categorized as immediate, one-year, or monitored conditions.

Industry Petition for IMP Modifications and Clarifications

On June 18, 2004, the American Petroleum Institute (API) and the Association of Oil Pipe Lines (hereinafter collectively referred to as ''API'') petitioned PHMSA for changes to the hazardous liquid pipeline IMP regulations. The petition sought changes in three areas:

(1) adding flexibility to reassessment intervals;

(2) adding flexibility to scheduling repairs; and

(3) providing for notification when an operator is unable to make a repair because of permitting or other problems.

On August 27, 2004, PHMSA personnel met with API representatives to further discuss API's proposed changes; a meeting summary is in the docket.

NPRM Changes and Information Request

(1) *Flexibility in Reassessment Interval.* To preserve a pipeline's integrity, § 195.452(j) requires a continual evaluation and assessment of each hazardous liquid pipeline segment that could affect an HCA. Under § 195.452(j)(3), an operator is required to establish intervals not to exceed five years for continually assessing the pipe's integrity. The API petition requests the reassessment interval be extended from a maximum of 5 years to

not longer than 68 months. API maintains that adding a window of time to complete a reassessment gives operators flexibility when having to factor in events affecting reassessment. Such events could include weather conditions, scheduling difficulties in getting certain tools, species' life cycle activities, and permitting problems. API's petition also notes the expanded interval would be consistent with other pipeline safety regulations specifying time frames for completing required activities.

PHMSA agrees adding an eight-month window to the hazardous liquid pipeline five-year reassessment interval will give operators flexibility in scheduling and completing reassessment, without compromising pipeline safety. Such a change is consistent with other pipeline safety regulations specifying time frames for an operator to complete an inspection.

(2) *Scheduling Repairs.* API's petition also recommends modifying the ''Special requirements for scheduling remediation'' in § 195.452(h)(4) to allow application of engineering judgment and additional flexibility. API suggests an approach aligned with Part 192 gas transmission pipeline IMP repair criteria, such as:

- expanding immediate repairs to include any dent with cracking indications (rather than just top side dents with cracking);
- removing 3% dents from 60-day conditions;
- creating a 365-day condition category; and
- creating a monitored conditions category consisting of ''other conditions'', and some of the 180-day conditions.

API gives the following reasons for requesting these revisions to the hazardous liquid pipeline repair criteria:

- the designation of 60- and 180-day conditions in Part 195 does not focus on the physical significance of an anomaly based on the likelihood pipe may fail;
- data indicate operators are not finding significant 60-day conditions;
- the excavation necessary to examine anomalies and to conduct repairs is the most expensive part of the process; operators seek to schedule excavations for repairs as efficiently as possible while still making timely repairs;
- the length of time for getting necessary permits and approvals can exceed the required time frames for making repairs;
- the extension of 60- and 180-day conditions to 365-day conditions will allow permitting agencies and operators to focus Federal streamlining efforts on those repairs that may pose an immediate risk;
- environmental considerations to protect important species will affect operators' ability to schedule necessary pipeline integrity activities; and
- repair criteria based on immediate, scheduled, and monitored repairs would work well for the hazardous liquid pipeline industry, especially considering its high usage of in-line inspection tools.

Request for Data

PHMSA and API discussed the need for more information (data on types of defects currently requiring remediation within 60 and 180 days), before PHMSA could determine if regulatory or some other action would be needed to address API's request. To better determine what type of action, if any, is needed PHMSA is requesting data and comments on the following topics:

- an identification of the characteristics of defects requiring short-term (60- and 180-day) remediation;
- an evaluation of defects to find out which are stable;
- a sound engineering or technical basis for checking rather than repairing these defects; and
- the development of criteria allowing operators to use logs from internal inspection tool runs to identify stable defects.

(3) *Notification of Special Circumstances.* API believes the hazardous liquid pipeline IMP rule fails to recognize that an operator may not be able to make a repair within a required period. API requests changing the rule to allow an operator to notify PHMSA when the operator has taken all available steps and is still unable to conduct an investigation or repair a specific condition. API maintains such a change would alert PHMSA to the myriad real-world conditions (weather, electrical outage, and permitting requirements) that can interfere with repair periods and would also protect operators from enforcement action for events over which an operator has no control. API further believes notification would help PHMSA recognize patterns potentially affecting pipeline safety, such as new or changed permit criteria.

Both the hazardous liquid pipeline (§ 195.452(h)) and gas transmission pipeline (§ 192.933) IMP remediation requirements require an operator to temporarily reduce pressure or to shut down the pipeline until the operator completes repair of an immediate repair condition. Gas transmission pipeline operators are also required to reduce pressure if they cannot meet a specified time limit for making a repair, or to take other action to ensure segment safety. The regulations do not require notification when an operator reduces pressure. Notification is required only when a hazardous liquid pipeline or gas transmission pipeline operator cannot meet its schedule for evaluating and remediating any condition and cannot provide safety though a temporary reduction in operating pressure. Any pressure reduction longer than 365 days must also be justified.

PHMSA agrees with API that notifying PHMSA of the reasons for an operator making a pressure reduction would give the agency better information on conditions that could interfere with an operator's ability to complete remediation of defects found during an integrity assessment. However, the usefulness of such information is not limited to repairs made on hazardous liquid pipelines. Therefore, PHMSA is proposing to revise remediation requirements to require both gas transmission pipeline and hazardous liquid pipeline operators to notify PHMSA when a pressure reduction is made on a segment covered under IMP to remediate a defect, and to provide the reasons for the pressure reduction. Instead of only requiring notification when an operator cannot meet repair schedules and cannot provide safety through a temporary reduction in operating pressure, an operator would be required to notify PHMSA any time it reduces operating pressure to make a repair, and to give the pressure reduction reasons. If a repair takes longer than 365 days, an operator would again have to notify PHMSA and provide the reasons for the delay. Operators would still be required to take further remedial action to ensure pipeline safety when a pressure reduction exceeds 365 days.

For gas transmission pipeline operators, State notification requirements would continue to apply for intrastate gas transmission pipelines and interstate gas transmission pipelines in States where PHMSA has an interstate agent agreement. However, we are proposing to delete the requirement for notification of local pipeline safety authorities. PHMSA is not aware of any instance where an intrastate gas transmission pipeline would be regulated by a local authority rather than a State public safety authority. Furthermore, PHMSA interstate agreements are only with State pipeline safety authorities.

PHMSA proposes these revisions to get a better understanding of the reasons hazardous liquid pipeline and gas

transmission pipeline operators are delayed in making repairs. PHMSA further hopes to work with the U.S. Department of Energy to analyze whether prolonged pressure reductions have potential impact on the Nation's energy supply. This notification will also give PHMSA better information on:

- whether permitting issues are involved in pressure reduction;
- what causes schedule delays (permitting, scheduling, other); and
- where and under what circumstances PHMSA can help expedite permits for repairs.

(4) *Formula for Reducing Operating Pressure.* Section 195.452(h)(4) requires a hazardous liquid pipeline operator to calculate a temporary reduction in operating pressure using the formula in section 451.7 of ASME/ANSI B31.4 when making an immediate repair. The requirement was meant to ensure an additional safety margin is provided while an operator makes an immediate repair. However, a recent frequently asked question highlighted that this formula does not always apply and may result in a calculated pressure higher than the original operating pressure. In addition, the formula only applies to metal loss anomalies, not to immediate repair conditions not involving metal loss. Therefore, PHMSA proposes to correct the provision by allowing a hazardous liquid pipeline operator to use the ASME/ANSI B31.4 formula only if applicable. If not applicable to the anomaly, or if the formula results in a calculated pressure higher than original operating pressure, an operator would be allowed to use another acceptable means to calculate a pressure reduction.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

DOT does not consider this action to be a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993). This NPRM is nonsignificant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979). PHMSA prepared a Draft Regulatory Evaluation for this NPRM and placed it in the public docket.

The proposed changes to add flexibility to scheduling continuous assessment would create ongoing benefits and have no cost effects. These adjustments would create positive net benefits. PHMSA believes the proposed change to the notification requirement for pressure reduction would create added continuing costs, with an estimated six notifications per operator each year. However, notification requirements have no significant cost for either operators or industry overall. The benefits are expected to offset costs. Together, these proposed changes to IMP regulations for hazardous liquid and gas transmission pipelines are expected to create positive net benefits.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) PHMSA must consider whether a rulemaking would have a significant impact on a substantial number of small entities. The requirements proposed in this NPRM do not apply to a substantial number of small entities. The proposed revisions to the IMP rules will affect hazardous liquid pipeline operators and gas transmission pipeline operators. Most hazardous liquid pipeline operators and gas transmission pipeline operators do not meet the Small Business Administration's small business definition, which is either 6 million in revenue (for natural gas pipelines under North American Industry Classification System (NAICS) 486210) or 1,500 employees (for crude oil and refined petroleum product pipelines under NAICS 486110 and 486910). Additionally, notification costs per operator are about $194.50 annually. This is less than 0.01 percent of the $6 million gross revenue. This is not a significant burden on pipeline operators, including small businesses.

The proposed changes to add flexibility to scheduling continuous assessment would create ongoing benefits and have no cost effects. These modifications would create positive net benefits. The changed notification requirements for pressure reduction would create negligible added costs as well as benefits; however, the benefits are expected to offset costs. Together, these proposed changes to the IMP regulations for hazardous liquid and gas transmission pipelines are expected to create positive net benefits to the affected industry.

Based on the cost benefit analysis and the determination that hazardous liquid pipeline and gas transmission pipeline operators do not generally fall into the Small Business Administration's revenue or employee size guidelines, it is unlikely (under section 605 of the Regulatory Flexibility Act) the proposed regulatory changes will have any significant impact on a substantial number of small entities. PHMSA invites comments on these assumptions.

Paperwork Reduction Act

This NPRM proposes minimal information collection requirements. Based on information currently available to PHMSA, 74 notifications were submitted by 26 operators over three years. Of these 74 notifications, 36 of them, or about 50 percent, were due to an operator's inability to meet repair schedules or reduce pressure. The proposed notification modifications will increase notification frequency. PHMSA estimates, on average, the proposed changes will result in six notifications per operator annually. The estimated average time to prepare a notification request is 30 minutes. Consequently, there should be no significant cost or hourly burden on individual operators or the industry because of the notification requirement in this proposal. PHMSA evaluated the NPRM, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and believes there will be no significant paperwork burden on industry or individual operators because of the NPRM. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), PHMSA will present a separate paperwork analysis to the Office of Management and Budget for review. A copy of the analysis will also be entered in the docket.

Executive Order 13084

This NPRM has been analyzed under principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this NPRM does not significantly or uniquely affect communities of Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Executive Order 13132

PHMSA analyzed this NPRM under principles and criteria contained in Executive Order 13132 (Federalism). None of the proposed actions: (1) Has substantial direct effects on States, relationships between the National Government and the States, or distribution of power and responsibilities among various levels of government; (2) imposes substantial direct compliance costs on States and local governments; or (3) preempts State law. Therefore, the consultation and funding requirements of Executive Order 13132 (64 FR 43255; August 10, 1999) do not apply.

Executive Order 13211

This NPRM is not a ''significant energy action'' under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). It is not likely to have a significant adverse effect on

supply, distribution, or energy use. Further, the Office of Information and Regulatory Affairs has not designated this NPRM as a significant energy action.

Unfunded Mandates

This NPRM does not impose unfunded mandates under the 1995 Unfunded Mandates Reform Act. It does not result in costs of $100 million or more to either State, local, or tribal governments, in aggregate, or to the private sector, and is the least burdensome alternative for achieving the NPRM objectives.

National Environmental Policy Act

PHMSA analyzed this NPRM in accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332), the Council on Environmental Quality regulations (40 CFR 1500–1508), and DOT Order 5610.1D, and has preliminarily determined this action will not significantly affect human environment quality. The Environmental Assessment is in the Docket.

List of Subjects in 49 CFR Parts 192 and 195

Pipeline safety, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, PHMSA proposes to amend 49 CFR parts 192 and 195 as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

2. Amend § 192.933 by revising paragraphs (a) and (c) to read as follows:

§ 192.933 What actions must be taken to address integrity issues?

(a) *General requirements.* An operator must take prompt action to address all anomalous conditions that the operator discovers through the integrity assessment. In addressing all conditions, an operator must evaluate all anomalous conditions and remediate those that could reduce a pipeline's integrity. An operator must be able to demonstrate that the remediation of the condition will ensure that the condition is unlikely to pose a threat to the integrity of the pipeline until the next reassessment of the covered segment.

(1) *Pressure reduction.* If an operator is unable to respond within the time limits for certain conditions specified in this section, the operator must temporarily reduce the operating pressure of the pipeline or take other action that ensures the safety of the covered segment. If pressure is reduced, an operator must determine the temporary reduction in operating pressure using ASME/ANSI B31G (ibr, see § 192.7) or AGA Pipeline Research Committee Project PR–3–805 (''RSTRENG''; ibr, see § 192.7) or reduce the operating pressure to a level not exceeding 80 percent of the level at the time the condition was discovered. (See appendix A to this part for information on availability of incorporation by reference information).

(i) *Notice.* An operator must notify PHMSA in accordance with § 192.949 whenever it reduces operating pressure to make a repair under this subpart. This will include any temporary reduction in pressure required by this section. This notice must include the reasons for the pressure reduction. An operator must also notify a State pipeline safety authority when either a covered segment is located in a State where PHMSA has an interstate agent agreement, or an intrastate covered segment is regulated by that State.

(ii) *Long-term pressure reduction.* When a pressure reduction exceeds 365 days, an operator must again notify PHMSA under § 192.949 with the reasons causing the delay. An operator must also notify a State pipeline safety authority when either a covered segment is located in a State where PHMSA has an interstate agent agreement, or an intrastate covered segment is regulated by that State. In addition, an operator must provide a technical justification that the continued pressure restriction will not jeopardize the integrity of the pipeline.

(2) [Reserved]

* * * * *

(c) *Schedule for evaluation and remediation.* An operator must complete remediation of a condition according to a schedule that prioritizes the conditions for evaluation and remediation. Unless a special requirement for remediating certain conditions applies, as provided in paragraph (d) of this section, an operator must follow the schedule in ASME/ANSI B31.8S (ibr, see § 192.7), section 7, Figure 4. If an operator cannot meet the schedule for any condition, the operator must justify the reasons why it cannot meet the schedule and that the changed schedule will not jeopardize public safety.

* * * * *

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

3. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

4. Amend § 195.452 by revising paragraphs (h)(1), (h)(3), (h)(4)(i) introductory text and the first sentence of paragraph (j)(3) to read as follows:

§ 195.452 Pipeline integrity management in high consequence areas.

* * * * *

(h) * * *

(1) *General requirements.* An operator must take prompt action to address all anomalous conditions that the operator discovers through the integrity assessment or information analysis. In addressing all conditions, an operator must evaluate all anomalous conditions and remediate those that could reduce a pipeline's integrity. An operator must be able to demonstrate that the remediation of the condition will ensure that the condition is unlikely to pose a threat to the long-term integrity of the pipeline. An operator must comply with § 195.422 when making a repair.

(i) *Pressure reduction.* An operator must notify PHMSA in accordance with paragraph (m) of this section whenever it reduces operating pressure to make a repair under this section. This will include any temporary reduction in pressure required by paragraph (h) (4) (i) of this section. This notice must include the reasons for the pressure reduction.

(ii) *Long-term pressure reduction.* When a pressure reduction exceeds 365 days, an operator must again notify PHMSA in accordance with paragraph (m) of this section with the reasons causing the delay. An operator must also take further remedial action to ensure the safety of the pipeline.

* * * * *

(3) *Schedule for evaluation and remediation.* An operator must complete remediation of a condition according to a schedule that prioritizes the conditions for evaluation and remediation. If an operator cannot meet the schedule for any condition, the operator must justify the reasons why it cannot meet the schedule and that the changed schedule will not jeopardize public safety or environmental protection.

(4) *Special requirements for scheduling remediation.* (i) *Immediate repair conditions.* An operator's evaluation and remediation schedule must provide for immediate repair conditions. To maintain safety, an operator must temporarily reduce operating pressure or shut down the

pipeline until the operator completes the repair of these conditions. An operator must calculate the temporary reduction in operating pressure using the formula in section 451.7 of ASME/ANSI B31.4 (ibr, see § 195.3), if applicable. If the formula is not applicable to the type of anomaly or the calculated pressure results in a higher operating pressure, an operator must use an alternative acceptable method to calculate a reduced operating pressure. An operator must treat the following conditions as immediate repair conditions:

* * * * *

(j) * * *

(3) *Assessment intervals.* An operator must establish five-year intervals, not to exceed 68 months, for continually assessing the line pipe's integrity.* * *

* * * * *

Issued in Washington, DC, on December 12, 2005.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 05–24061 Filed 12–12–05; 1:29 pm]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2005–21462]

RIN 2127–AJ37

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The agency is proposing to amend our air brake standard to improve the stopping distance performance of truck tractors. Based on current safety trend data and brake system technologies for truck tractors, we are proposing to reduce the required stopping distance for these vehicles by 20 to 30 percent. We have tentatively concluded that truck tractors are capable of achieving a reduction in stopping distance within this range with existing technologies.

We also discuss research and request comment concerning improving the braking performance of other types of heavy vehicles, *i.e.*, trailers, straight trucks, and buses. The agency may address improved braking performance for these other vehicles in a future rulemaking.

DATES: You should submit comments early enough to ensure that Docket Management receives them not later than April 14, 2006.

ADDRESSES: You may submit comments (identified by the DOT DMS Docket Number) 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: (202) 493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- 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. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Request for Comments heading under the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. 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*.

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.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration:

For non-legal issues: Mr. Jeff Woods of the NHTSA Office of Rulemaking at (202) 366–6206.

For legal issues: Mr. Christopher Calamita of the NHTSA Office of Chief Counsel at (202) 366–2992.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background
II. Safety Issues
III. Heavy Truck Braking Performance
A. NHTSA Research
B. Industry Research
C. Agency Proposal
IV. Benefits and Costs of Improved Stopping Distances
V. Lead Time
VI. Ongoing and Future Research
VII. Request for Comments
VIII. Rulemaking Analyses and Notices

I. Background

On March 10, 1995, we published three final rules as a part of a comprehensive effort to improve the braking ability of medium and heavy vehicles [1] (60 FR 13216 and 60 FR 13287). The major focus of that effort was to improve the directional stability and control of heavy vehicles during braking through antilock brake system (ABS) requirements. However, the 1995 effort also reinstated stopping distance requirements for air-braked vehicles, and established different stopping distances for different types of heavy vehicles. Previous stopping distance requirements for medium and heavy vehicles had been invalidated in 1978 by the United States Court of Appeals for the 9th Circuit because of issues with the reliability of ABS then in use. See, *PACCAR* v. *NHTSA*, 573 F.2d 632 (9th Cir. 1978) *cert. denied*, 439 U.S. 862 (1978).

The current stopping distance requirements under Federal Motor Vehicle Safety Standard No. 121, *Air brake systems*, as established under the 1995 final rule, are determined according to vehicle type. Under the loaded-60-mph stopping distance requirements of FMVSS No. 121, air-braked buses must comply with a stopping distance of 280 feet, air-braked single-unit trucks must comply with a stopping distance of 310 feet, and air-braked truck tractors must comply with a stopping distance requirement of 355 feet.[2] Under the unloaded-60-mph

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[1] Medium and heavy weight vehicles are hydraulic-braked vehicles over 10,000 pounds gross vehicle weight rating (GVWR) (i.e., trucks and buses), and all vehicles with a GVWR greater than 10,000 pounds equipped with air brake systems (i.e., trucks, buses, and trailers); here after referred to collectively as heavy vehicles. Large trucks are a segment of heavy vehicles and are defined as trucks, including truck tractors, with a GVWR greater than 10,000 pounds.

[2] For heavy truck tractors (tractors), the current stopping distance test at GVWR is conducted with the tractor coupled to an un-braked control trailer, with weight placed over the fifth wheel of the

stopping distance requirements [3] of FMVSS No. 121, air-braked buses must comply with a stopping distance of 280 feet, and air-braked single-unit trucks and air-braked truck tractors must comply with a stopping distance requirement of 335 feet. Under the emergency brake-60 mph stopping distance requirements [4] of FMVSS No. 121, air-braked buses and air-braked single-unit trucks must comply with a stopping distance of 613 feet, and air-braked truck tractors must comply with a stopping distance requirement of 720 feet.

The stopping distance requirements adopted in the 1995 final rule are generally less stringent than those invalidated by the *PACCAR* decision in 1978. In adopting the requirements, the agency estimated that half of the air-braked truck tractors and a quarter of the air-braked single-unit trucks would meet the stopping distance requirements without modification. However, the stopping distance requirements were an enhancement to the overall braking performance of air-braked vehicles given the newly adopted ABS requirements. The agency determined that the stability and control during braking requirements would result in a majority of the benefits, but estimated that the new stopping distance requirements would prevent annually about 3 vehicle occupant fatalities, 84 vehicle occupant injuries, and $3.24 million in property damage.

II. Safety Issues

Since the agency established the stability control and stopping distance requirements for heavy vehicles almost ten years ago, data indicate that the involvement of large trucks in fatal and injury producing crashes has slightly declined while vehicle-miles-traveled (VMT) has increased. However, because the number of registered large trucks has increased, the total number of crashes remains high. In 2002:

- 434,000 large trucks were involved in traffic crashes in the U.S.
- 4,542 large trucks were involved in fatal crashes, resulting in 4,897 fatalities (11 percent of all highway fatalities reported in 2002). Seventy-nine percent of the fatalities were occupants of another vehicle, 14 percent were truck occupants, and 7 percent were nonoccupants.
- 130,000 people were injured in crashes involving large trucks. Seventy-seven percent of the injuries were occupants of another vehicle, 20 percent were truck occupants, and 3 percent were nonoccupants.[5]

According to *Large Truck Crash Facts 2001* (report number FMCSA–RI–02–011; provided in the docket for this notice), published by the Analysis Division of the Federal Motor Carrier Safety Administration (FMCSA), the large truck fatality rate (e.g., the number of fatalities per 100 million VMT) was 60 percent higher than the fatality rate for passenger vehicles (defined as a car or light truck) in 2001. When the FMCSA report considered combination trucks (e.g., tractor and trailer combinations) separately, the fatality rate was nearly double that of passenger vehicles. Conversely, the fatality rate for single-unit trucks was approximately 15 to 20 percent higher than the fatality rate for passenger vehicles. The FMCSA data indicate that for all types of crashes that involve large trucks, trucks with a gross vehicle weight rating (GVWR) over 26,000 pounds are more likely to be involved than other large trucks.

Retail sales data, averaged for 2000 and 2001, indicate that annual sales of medium-duty trucks between 10,001 and 26,000 pounds GVWR were approximately 228,000 units and annual sales of heavy-duty trucks over 26,000 pounds GVWR were approximately 283,000 units. While data indicate that medium-duty trucks make up a sizable portion of the population of large trucks in the U.S. truck fleet, the crash data indicate that the majority of crashes involve heavy-duty trucks with GVWRs over 26,000 pounds, as shown in Table 1. Almost all of the vehicles with a GVWR greater than 26,000 lbs. are air-braked, and over half of those are truck tractors.

TABLE 1.—LARGE TRUCKS IN CRASHES BY GROSS VEHICLE WEIGHT RATING

[FMCSA-RI–02–011, January 2003]

Gross vehicle weight rating	Fatal		Injury		Towaway	
	Number	Percent	Number	Percent	Number	Percent
≤10,000 lbs	2	*	449	1.2	592	1.4
10,001–26,000 lbs	519	10.8	3,772	9.9	4,931	11.7
≥26,001 lbs	4,246	88.6	26,736	70.2	29,941	70.9
Missing**	14	0.3	7,104	18.7	6,795	16.1
Unknown***	12	0.3	.....	.....	.....	.....
Total	4,793	100.0	38,061	100.0	42,259	100.0

* Less than 0.05 percent.
** GVWR was not recorded.
*** GVWR was recorded as "unknown."

One factor contributing to this difference in risk is that, in general, the heavier a vehicle is the longer it requires to stop for a given speed. While large trucks operate on the same roadways as significantly lighter passenger vehicles, large trucks may take twice as long to stop in instances of panic stop braking. The difference in mass between large trucks and passenger vehicles also contributes to passenger vehicles incurring greater damage in collisions between such vehicles. Recent developments in brake systems indicate that stopping distance reductions are

tractor, and a 4,500 pound load on the single axle of the trailer. This test method isolates the braking performance of the tractor so that only the performance of the tractor is evaluated. The performance of a tractor in an FMVSS No. 121 stopping distance test does not directly reflect the on-road performance of a tractor semi-trailer combination vehicle that has braking at all wheel positions.

[3] Vehicles are tested at lightly loaded vehicle weight (LLVW).

[4] Emergency brake system performance is tested with a single failure in the service brake system of a part designed to contain compressed air or brake fluid (see, S5.7.1).

[5] See *Traffic Safety Facts 2002—Large Trucks*, National Center for Statistics and Analysis (NCSA), report number DOT HS 809 608. The NCSA report uses the term "large trucks," which in practical terms describes the same segment of the vehicle population as "heavy vehicles." A copy is provided in the docket for this notice.

possible for these heavy vehicles that represent the highest crash and fatality risk.

Reductions in stopping distance will, in most cases, result in a reduction in the impact velocity, and hence the severity of a crash. In some cases, reduced stopping distances will actually prevent a crash from occurring, i.e., a vehicle with a reduced stopping distance will stop short of impacting another vehicle. Based on the crash data from a NCSA report,[6] improvements in stopping distance would provide benefits in crashes with the following geometries: rear-end, truck striking passenger vehicle; passenger vehicle turned across path of truck; and straight path, truck into passenger vehicle (generally side-impact crashes at roadway junctions). The total percentage of all passenger vehicle occupant fatalities for these crash types is 26 percent and on an annual basis resulted in 655 fatalities. In addition, it is possible that some head-on collisions could be reduced in severity, since improvements in the braking capability of large trucks could reduce impact speeds.

III. Heavy Truck Braking Performance

NHTSA has been exploring the feasibility of reducing the stopping distance requirement under FMVSS No. 121 for heavy air-braked vehicles by 20 to 30 percent. We have initially focused on air-braked truck tractors, since the crash data indicate that this vehicle type is most frequently involved in fatal truck crashes. NHTSA's Office of Vehicle Safety Research has been conducting brake research on enhanced crash avoidance capabilities for large trucks. Developments in air disc brakes, enhanced larger capacity drum brakes, electronic controlled brake systems (ECBS), and advanced ABS have contributed to the agency's decision to propose more stringent stopping distance requirements for truck tractors.

[6] *An Analysis of Fatal Large Truck Crashes*, DOT HS 809 569, June 2003.

A. NHTSA Research

At NHTSA's Vehicle Research and Test Center (VRTC) in East Liberty Ohio, research was initiated in 2002 to compare the performance of air-braked tractors and trailers equipped with a variety of brake system configurations. VRTC tested two conventional air-braked tractors with four different foundation brake[7] configurations. The brake configurations tested included the following:

a. Standard brake drums on both the steer and drive axles,

b. Larger capacity drums on the steer axle and standard drums on the drive axles (drum hybrid),

c. Air disc brakes on the steer axle and standard drums on the drive axle (disc hybrid),

d. Air disc brakes on steer and drive axles.[8]

Testing was performed in accordance with the procedure in FMVSS No. 121, which includes testing at lightly loaded vehicle weight[9] (LLVW) and at GVWR conditions. Each vehicle was tested six times in each configuration at each weight. The VRTC results suggests that the test vehicles would be able to comply with a 20 to 30 percent reduction in the stopping distance requirements at both weight conditions with modifications only to the foundation brake systems.

When tested at the GVWR condition, the data show that these two vehicles performed quite differently in their standard brake configurations with conventional S-cam brakes.[10] With disc brakes at all wheel positions, both vehicles were able to exceed a 30 percent stopping distance reduction (249 ft) from the current requirements in FMVSS No. 121 at GVWR (355 ft). Both vehicles were able to exceed a 20 percent stopping distance reduction (284 ft) from the current standard using either hybrid system. It is notable that the second test truck was able to meet a 20 percent reduction in the stopping distance requirement when tested at GVWR in its original brake system configuration.

When tested at GVWR condition, the first test truck (Truck A), achieved stopping distances in six tests ranging from 307 to 328 feet (average 317 feet) with its standard foundation brake configuration. When Truck A was equipped with larger capacity drums on the steer axle, its braking distances ranged from 250 to 261 feet (average 252 feet). When configured with disc brakes on the steer axle only, stopping distances for the same truck ranged from 234 to 258 feet (average 247 feet). With disc brakes on both the steer and drive axles, stopping distances for the first test vehicle ranged from 218 to 228 feet (average 222 feet).

In six tests at GVWR condition, the second test truck (Truck B) achieved stopping distances ranging from 260 to 273 feet (average 264 feet) when tested with its standard foundation brake configuration. The agency notes that this vehicle in its standard configuration would be able to meet a 20 percent reduction in the current stopping distance requirement. When Truck B was equipped with larger capacity drums on the steer axle, its braking distances ranged from 264 to 278 feet (average 269 feet). When configured with disc brakes on the steer axle only, stopping distances for the same vehicle ranged from 249 to 280 feet (average 263 feet). With disc brakes on both the steer and drive axle, stopping distances for the second test truck ranged from 235 to 249 feet (average 241 feet). The results are presented in Figure 1 below.

[7] A foundation brake system is the wheel end portion of a brake system, consisting of friction material (brake lining), an actuating mechanism, and a rotating element (drum or disc).

[8] For a complete list of the technical specifications used in testing see ''Class 8 Truck Tractor Braking Performance Improvement Study: Report—1,'' DOT HS 809 700 (May 2004). A copy is provided in the docket for this notice).

[9] LLVWW is defined as the empty weight of the truck plus up to 1,500-pound allowance for test driver, vehicle instrumentation, and an optional roll bar structure.

[10] These differences were most likely due to differences in the brake systems aside from the foundation brakes; e.g., differences in brake linings.

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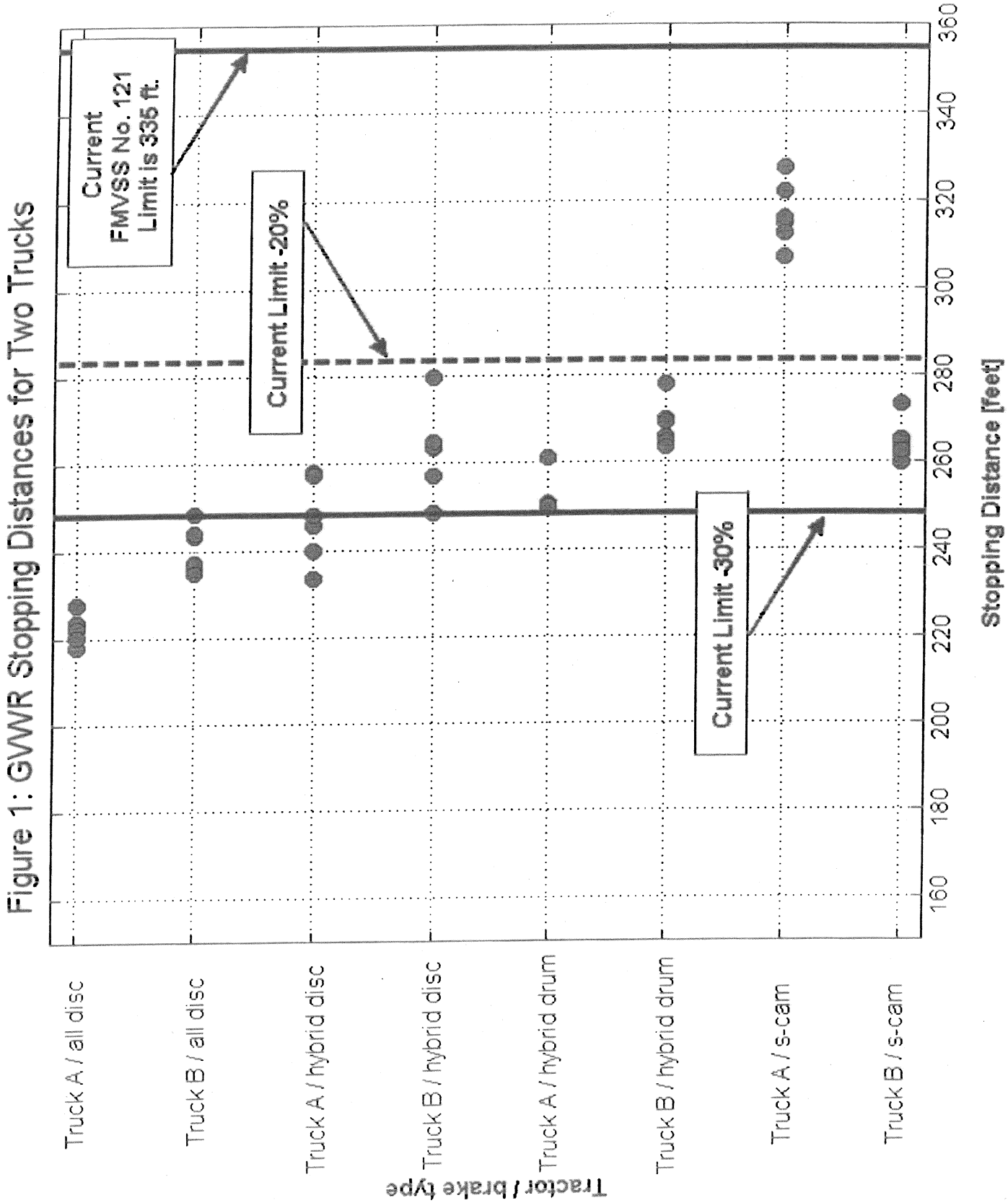

Figure 1: GVWR Stopping Distances for Two Trucks

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In general terms, the VRTC data demonstrate that air disc brakes installed on all brake positions of a tractor would enable typical three-axle tractors to exceed a 30 percent reduction in stopping distance over the requirements currently specified in FMVSS No. 121 at GVWR condition. Both hybrid systems also showed improvements in stopping performance at or near a 30 percent reduction for the first test vehicle. The two hybrid systems did not appreciably change the stopping distances from the baseline vehicle for the second test truck, but with these configurations the second test truck did exceed a 20 percent reduction in the stopping distance requirements.

The FMVSS No. 121 stopping distance requirement for truck tractors in the LLVW condition is 335 feet. Tests of the two tractors at VRTC confirm that truck tractor braking in the LLVW condition is improved with the addition of ABS. Both truck tractors could meet a 30 percent reduction (235 feet) in FMVSS No. 121 requirements in the standard foundation brake configuration, although the average of six LLVW stops for one truck tractor was 230 feet (five stops were below 235 feet and one stop was 238 feet). With larger S-cam drum or disc foundation brakes on the steer axle, or with disc brakes at all wheel positions, the average of six stops at LLVW for the two truck tractors ranged from 178 to 205 feet, well below a 235-foot target value. The results are presented in Figure 2 below.

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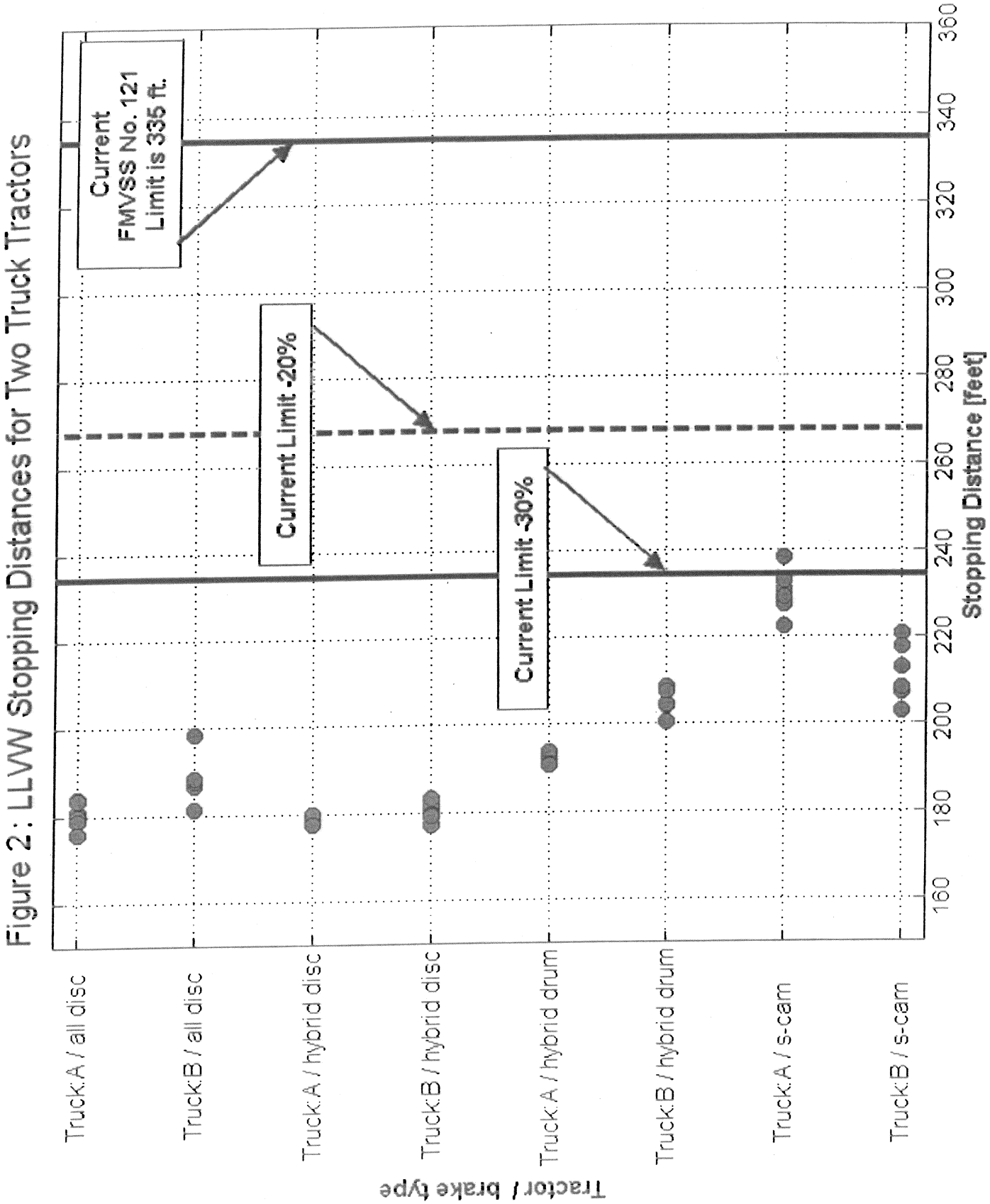

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The agency notes that both test trucks were not brand new (although in good condition), and the disc brakes and larger drum brakes were installed on the

vehicles without any other modifications to the vehicles' suspensions or other components. Other data may suggest that changes to suspensions or ABS could further improve braking performance. However, the agency believes that these test results on older tractor models support the feasibility of improving tractor stopping distance performance by a 20 to 30 percent reduction of the current requirement.

FMVSS No. 121 also requires truck tractors to comply with a minimum stopping distance in emergency braking. Under S5.7.1, an unloaded truck tractor must stop at least once in a series of six attempts within the specified distance, from the specified speed, and with a single failure in the service brake system of a part designed to contain compressed air or brake fluid. When emergency braking at a speed of 60 mph, Table II of FMVSS No. 121 specifies a stopping distance of 720 feet. For current brake system designs, the most extreme failure is typically a failure in the primary reservoir. Essentially, this results in a vehicle having to rely solely on the front brakes to stop.

Aside from examining the impact of various brake configurations on normal stopping, VRTC also subjected the test vehicles to emergency braking under the same brake configurations. VTRC performed the tests after failing the primary reservoir.

TABLE II.—FAILED PRIMARY RESERVOIR STOPPING DISTANCES FOR EACH BRAKE TYPE OF BOTH TRUCK TRACTORS IN THE LLVW LOAD CONFIGURATION

Tractor	Foundation brake type	Minimum (ft.)	Margin of compliance with 720 ft. requirement (percent)	Margin of compliance with 30% reduction (504 ft.)
Truck A	All S-cam drums	636	11.7	−26.7
	Hybrid drums	363	49.6	28.0
	Hybrid disc	276	61.6	45.2
	All disc	294	59.2	41.4
Truck B	All S-cam drums	432	40.0	14.3
	Hybrid drums	365	49.4	27.6
	Hybrid disc	300	58.3	40.5
	All disc	303	57.9	39.9

These results indicate that the same modifications that improve service brake stopping distances also improve emergency braking stopping distances. We tentatively conclude that it is feasible to improve tractor emergency braking stopping distance performance by a 20 to 30 percent reduction of the current requirement.

The VRTC report docketed with this notice contains detailed information on the testing of these truck tractors and an interpretation of the results.[11]

• The agency welcomes comments or test data on the performance of various foundation brake configurations on truck tractors, trailers, or single-unit vehicles, for both GVWR and LLVW brake testing. Information on the weight of larger capacity drum brakes, versus disc brakes and conventional drum brakes, are also requested.

B. Industry Research

In recent industry testing conducted on a typical truck tractor, larger capacity drum brakes at all wheel positions performed equal to or better than air disc brakes at all wheel positions as tested by NHTSA. The data on the performance of larger capacity drum brakes on both steer and drive axles for a typical three-axle tractor were provided to NHTSA by two suppliers of heavy truck brake linings, Federal Mogul Corporation and Motion Control Industries, Inc. When compared to the current stopping requirement, a test vehicle utilizing larger capacity drum brakes at all wheel positions experienced stopping distances below a 30 percent reduction to the current standard. The suppliers have provided the results of these tests for placement in the public docket.

The tests were conducted on a three-axle tractor originally manufactured with larger capacity S-cam drum brakes on the steer and drive axles, that was taken from regular fleet service and subjected to FMVSS No. 121-type test requirements by Radlinski and Associates[12] in East Liberty, Ohio. While the testing performed by VTRC simply added larger capacity brake drums to a single axle with no other modifications, Radlinski tested a single vehicle with larger capacity drums on all axles and performed parametric studies on the actuating mechanisms and GVWR. The seven configurations varied as to the nominal axle weights, brake chamber size and slack adjuster lengths.[13] Suspensions and related components remained as originally configured by the vehicle manufacturer.

Six stops were made for each of the seven test conditions. The tractor was tested from 60 mph on high friction pavement, loaded to GVWR using the FMVSS No. 121 unbraked control trailer. The test conditions used by Radlinski and Associates were the same as the VRTC test conditions and are the same conditions detailed in FMVSS No. 121.

Each of the configurations achieved an average stopping distance between 206 and 219 ft. A review of the variability among the six stops for each test condition shows that stop-to-stop variability was minimal. On average, the difference between the shortest stop and the longest stop for each of the seven test conditions was 10 feet. Thus the stopping distance performance in each test is observed to have little variation from stop-to-stop.

The performance exhibited by the larger capacity drum brakes on the Radlinski test vehicle, for each test condition, suggests that this vehicle could meet a 30 percent reduction (249 ft) in FMVSS No. 121 stopping distance

[11] The docketed report is an interim report detailing straight-line service brake performance. The report also provides comparative information for bobtail braking performance (tractor only with no trailer) and braking performance with conventional air-braked trailers equipped with both S-cam drum brakes and disc brakes. A comprehensive report addressing braking-in-a-curve, emergency braking, and braking performance with conventional trailers will be released at a future date.

[12] Radlinski and Associates is an independent testing and engineering consulting firm that services heavy vehicle and brake component manufacturers.

[13] Detailed specifications for each of the seven configurations are presented in the Radlinski report, which is provided in the docket for this notice.

requirement. In fact, the performance of this vehicle, in each of the seven brake configurations equaled or exceeded the performance of NHTSA's test vehicles equipped with disc brakes at all wheel positions.

Service brake tests in the LLVW condition were conducted for three of the seven test conditions in the Radlinski tests, and the average of six stops for each of the three test conditions ranged from a low of 163 feet to a high of 169 feet for the three test conditions. Thus this vehicle was capable of far exceeding a 30 percent reduction (235 feet) of the requirements in FMVSS No. 121 (335 feet) for LLVW tests.

According to data provided to NHTSA by the Heavy Duty Brake Manufacturers Council in April, 2004, larger S-cam drum brakes (16.5″ x 5″ and 16.5″ x 6″) are installed on the steer axle of approximately 10 percent of newly-manufactured air-braked trucks in the U.S., and wider, extended life (16.5″ x 8″ and 16.5″ x 8.625″) S-cam drum brakes are installed on the drive axles of approximately three percent of new air-braked trucks in the U.S.

While the testing relied upon by the agency was limited to three vehicle models, we believe that these models are representative of the truck tractor fleet. However, there may be vehicle models and configurations that would not perform in a manner similar to the test vehicles.

- The agency requests comments on the data and reports generated by Radlinski as well as any data or reports on the use of larger capacity drum brakes.

C. Agency Proposal

The agency is proposing to reduce the stopping distance requirements for the loaded and unloaded service brake distances and emergency brake distances, for truck tractors by 20 to 30 percent. As discussed above, data indicate that truck tractors would be able to comply with a reduction in this range through use of larger drum brakes. Also as explained above, the testing did not include other vehicle modifications that may further optimize a vehicle's braking capabilities. We have tentatively determined that this data justifies the proposed range of reduced distances and request comments on the feasibility of truck tractors to comply with the various stopping distances within the given ranges.

IV. Benefits and Costs of Improved Stopping Distances

The agency believes that by pursuing rulemaking to improve stopping distance performance, truck manufacturers will re-examine their specifications for brake components and make improvements, particularly on the steer axle brakes, and in other areas as well. In this industry, brake systems are installed according to specifications provided by truck purchasers/trucking fleets. NHTSA's preliminary regulatory impact analysis shows that enhanced brake system specifications will have net cost savings for truck operators after considering property damage savings. However, truck operators do not have this cost-saving information and only a few fleets are purchasing these improved systems. Thus, progress towards improved brake systems is impeded because truck operators are cost sensitive to the initial purchase price and they are reluctant to add different types and sizes of brake components to their specifications. Although truck manufacturers offer improved drum brakes and are introducing air disc brakes, very few fleets are purchasing them. Generally, the trend is to stay with the same brakes that have been used for many decades.

We estimate that 3 percent of the current truck tractors would comply with a 30 percent improved brake performance. The benefits of a 30 percent improvement in stopping distance are estimated to be a reduction of 257 fatalities and prevention of 284 AIS 3–5 injuries among occupants in truck trailer crashes. We estimate that 34 percent of the current truck tractors would comply with a 20 percent improvement in the stopping distance requirements distance without any modification. As such, the proposed 20 percent reduction in stopping distance would save 104 fatalities and prevent 120 AIS 3–5 injuries among occupants in truck trailer crashes.

Reducing stopping distance would significantly reduce property damage. Using a 3 percent discount rate, the agency believes that $166 million and $32 million of property damage would be prevented with the proposed 30 percent and 20 percent reduction in stopping distance, respectively.

Potential compliance costs for the proposed 30 percent and 20 percent stopping reduction requirements vary considerably and are dependent upon the types of the brake systems chosen by the manufacturers. Limited testing showed that both larger S-cam drum brakes and disc brakes at all wheel positions could meet the proposed 30 percent and 20 percent reduction in stopping distance. Given the current level of compliance, the average incremental cost per truck tractor would be $153 for larger S-cam drum brakes and $1,308 for disc brakes for the 30 percent reduction in stopping distance and $108 for larger S-cam drum brakes and $914 for disc brakes for the 20 percent reduction in stopping distance. We estimate that the total incremental cost for the 30 percent reduction would range from $20 million to $170 million dollars and that the total cost for the 20 percent reduction would range from $14 million to $119 million dollars.

However, when the prevention of property damage and equivalent lives saved are considered (at a 3 percent discount rate) the 30 percent reduction would result in a net benefit ranging from $994 million to $1,144 million. The 20 percent reduction would result in a net benefit ranging from $320 million to $425 million.

These costs and benefits were based on analyses of tests using vehicles that the agency believes to be representative of a majority of the market. We recognize that there may be vehicle configurations for which the cost of compliance may be higher. We request comment on the extent that other vehicle configurations would result in greater compliance costs.

For a more detailed discussion of the agency's benefit and cost analysis, please refer to the preliminary regulatory impact analysis that has been placed in the docket for this notice.

V. Lead Time

The current data support pursuing improvements specifically in truck tractor stopping distance performance, as these vehicles have the greatest exposure in fatal crashes among all of the large trucks. Substantial improvements in the braking performance of these vehicles appear feasible with existing technologies. The agency also understands that improvements in truck tractor stopping distance performance may involve more than simply increasing the power of foundation brakes, as changes might be required to suspensions and frames, etc., to handle the higher braking torque without decreasing vehicle durability and safety. However, the agency believes that two years of lead time after a final rule is issued would be adequate lead time for manufacturers to comply with a reduction in stopping distance in the proposed range. Given that vehicles tested by the agency and industry were able to comply with the proposed reductions without modifications other than to the foundation brakes, we believe that this is adequate lead time.

Potential changes to stopping performance requirements for air-braked single unit trucks and buses, and/or for hydraulic braked vehicles over 10,000

lbs. GVWR, will be addressed separately pending the outcome of relevant research data.

VI. Ongoing and Future Research

To date, the agency's research effort has focused on the stopping distance performance of air-braked truck tractors. Experience with the stopping distance performance of heavy duty single-unit trucks has shown that the wide variety of vehicle and body configurations for these vehicles, including wheel bases, axle ratings, and center of gravity heights, may result in a wide range of stopping distance performance. NHTSA intends to perform future research to determine if equipment changes that have demonstrated improvements in truck tractor stopping distance performance can successfully be applied to single-unit trucks as well.

The Office of Vehicle Safety Research is currently conducting a research program involving 50 truck tractors in over-the-road service to field test electronically-controlled air brake systems (ECBS), in combination with air disc brakes, in order to evaluate how these systems perform in normal highway use. As stated above, the stopping distance testing performed by industry and the agency did not consider modifications to a truck tractor other than changes in the foundation brakes. The truck tractors in the ECBS study are coupled to trailers that are equipped with conventional S-cam drum brakes and the trailer braking is by conventional pneumatic control.

Conventional air brake systems use pneumatic means to actuate the brakes and also to signal or control the brake actuation. ECBS uses pneumatic actuation of the brakes (compressed air in reservoirs delivered to brake actuators), but the signaling is performed electronically rather than pneumatically. The electronic signals transmit braking control commands over wires to electro-pneumatic control valves much faster than pneumatic signals flowing through brake tubing, providing quicker brake application and release timing. Also, ECBS can be interfaced with an electronic stability control system to selectively apply the brakes of a single-unit or combination vehicle to provide stability enhancement (yaw control to prevent vehicle spinout and speed reduction to prevent rollover) when instability conditions are detected through on-board sensors and processors. Other capabilities of ECBS include brake lining wear control, brake system status/diagnostic monitoring, and brake force proportioning to balance the brake forces according to the load being carried.

At present, ECBS is found more commonly on European commercial vehicles whereas market penetration in the U.S. has been low. In the U.S. market, trucking fleets play a much larger role in the specification of truck equipment than in Europe, and the complexity and cost of ECBS has contributed to U.S. fleets not purchasing these systems.

All of the ECBS that are currently in use on the road, both in Europe and the U.S., have full, split-system pneumatic redundancy. For ECBS to be economically viable in the U.S. market, it is possible that a different configuration would be needed with regard to pneumatic redundancy (i.e., back-up systems that prevent total loss of braking in the event of a partial brake system failure). The ECBS research and testing that is ongoing in the U.S. is in part being conducted to determine the reliability of electronic brake control, so that the agency will be better able to evaluate the safety of future, less expensive ECBS configurations that may be more acceptable to the U.S. fleet.

Results from the agency's ECBS research are expected to be published in mid-2005. While the agency believes that ECBS may provide some modest stopping distance reductions on heavy vehicles because of faster brake application timing, at this time the agency anticipates that the greatest improvements in stopping distance performance will be achieved through the application of more powerful foundation brakes. Therefore, ECBS was not considered for the proposal in this document.

The agency is unaware of performance data for systems using ECBS with proportional brake force control, but welcomes comments on this subject as well.

Additional vehicle testing is scheduled at VRTC through 2005 including air-braked single unit trucks and a variety of hydraulic-braked single-unit trucks and buses with GVWRs over 10,000 pounds. NHTSA will focus near-term research on typical configurations of single-unit trucks. Results of planned testing are not likely to be available until mid-2005, with additional test reports provided as the work is completed.

- In advance of the agency completing research on the braking performance of single-unit trucks, we are soliciting comments and data on potential improvements in this area.

NHTSA's Office of Vehicle Safety Research is also conducting research of dynamometer brake testing as specified in FMVSS No. 121. Under the requirements in S5.4 of FMVSS No. 121, trailer brakes are required to meet the brake retardation force requirements in S5.4.1, and all air brakes are required to meet the fade and recovery requirements in S5.4.2 and S5.4.3. Since there are no stopping distance requirements for trailer service brake systems in the standard, the dynamometer requirements serve to ensure adequate braking capability for trailer foundation brakes. The research will determine in part the performance of S-cam drum and air disc foundation brakes relative to the existing dynamometer requirements in FMVSS No. 121. The agency expects that this research will be completed (and a report published) by mid-2005.

Results of the dynamometer testing will assist the agency in determining if the dynamometer requirements in FMVSS No. 121, including brake retardation force and fade and recovery, should be considered for revision. Potentially, changes in either series of requirements could affect trailer braking systems or the fade and recovery requirements for any foundation brake used in truck, bus, or trailer air brake systems. Improvements to stopping performance requirements for tractors, involving steer axle braking power, may not benefit from changes to dynamometer requirements since the dynamic loading (weight transfer to the axle during hard braking) of steer axles can far exceed the static axle loading on which the dynamometer testing is based.

- The agency requests data from dynamometer tests conducted on standard and larger S-cam drum brakes and air disc foundation brake assemblies from all types of air-braked vehicles.

Finally, brake suppliers have provided the agency with limited information on enhanced ABS systems that have the capability of providing electronic stability control through selective application of brakes. The enhancement to the ABS is the ability to apply air and then use ABS modulator valves to hold off the brakes at certain wheels, so that selective braking is achieved. The stability control system is activated when a vehicle instability condition is detected by on-board sensors (yaw rate [vehicle spin], steering angle, etc.). The agency believes that such systems may provide many of the electronic stability control functions enabled by installation of ECBS but at lower cost. The agency is not aware that such systems would have substantial benefits in stopping distance

performance but welcomes comments on this issue.

While data from on-going and planned research may demonstrate that additional reductions to the stopping distance requirements are possible for all air-braked vehicles to varying degrees, the agency believe that the current data supports the proposed reduction in distances for truck tractors.

VII. Request for Comments

How Can I Influence NHTSA's Thinking on This Document?

In developing this document, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we have not considered, new data, how this document may affect you, or other relevant information. We welcome your views on all aspects of this document, but request comments on specific issues throughout this document. We grouped these specific requests near the end of the sections in which we discuss the relevant issues. Your comments will be most effective if you follow the suggestions below:

Explain your views and reasoning as clearly as possible.

- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts of this document you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of this document, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number with your comments.

In addition to responses to issues and questions raised above, the agency requests comments on the following issues and questions.

1. Comment on the general need for improved stopping distance requirements for air-braked truck tractors.

2. Provide comments on reducing stopping distances (at GVWR and LLVW) for tractors by 20 percent compared to the current FMVSS No. 121 requirement. Provide comments on reducing stopping distance for truck tractors by 30 percent.

3. Comment on the lead time to implement improvements on production vehicles required to comply with a 20 percent reduction; a 30 percent reduction.

4. Describe the vehicle modifications that are likely needed to reduce truck tractor stopping distance by 20 percent; 30 percent. Include the pros and cons of larger drum brakes and disc brakes, driver and vehicle purchaser acceptance, component/system weight and cost, vehicle alterations or engineering requirements, maintenance considerations, and other in-service issues. If possible, relate past experience with the application of similar brake system enhancements to European or North American air-braked trucks and buses.

5. Provide comments or data to identify any brake balance issues that may occur if truck tractors with more powerful foundation brakes are used in the existing trailer fleet. Again, relating experience with in-service tractors would be beneficial.

6. Please comment on any margin of compliance issues for tractors as related to the current effort to improve their stopping distance performance.

7. Describe any efforts that have been undertaken to improve single-unit truck braking performance. For example, many hydraulic-braked medium-duty trucks are now equipped with disc brakes at all wheel positions. Are there any similar efforts to improve the braking performance of heavy-duty air-braked single-unit trucks? Also, provide data if you believe there are single-unit truck configurations for which stopping distance improvements may be difficult to achieve.

8. Describe developments in ECBS and advanced ABS, and how these systems would have a positive effect on truck safety. Please quantify the benefits from these technologies in achieving the agency goal of reducing heavy vehicle stopping distances. How close are these systems to commercial application in the U.S. and what is the expected cost and acceptance by trucking fleets?

9. Provide data or information on dynamometer testing that would assist the agency in determining if the FMVSS No. 121 dynamometer requirements should be revised. Describe changes to the dynamometer requirements that could benefit heavy vehicle safety, or conversely, could have a negative effect and therefore should be avoided. Quantify additional costs, for testing or otherwise, associated with suggested changes to the dynamometer test requirements.

10. Provide comment and /or data on the extent to which the tractors tested by NHTSA and Radlinski & Associates cited in this NPRM are representative of the current vehicle fleet.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21) NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**. You may also submit your comments to the docket electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing your comments electronically. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[14]

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information

[14] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

claimed to be confidential business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR Part 512).

Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for the agency to consider it in developing a final rule (assuming that one is issued), the agency will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).
2. On that page, click on ''simple search.''
3. On the next page (*http://dms.dot.gov/search/searchFormSimple.cfm*) type in the docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the Docket for new material.

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.*

VIII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budget impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was reviewed by the Office of Management and Budget under E.O. 12866. This rulemaking is significant under E.O. 12866 and the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). As discussed above, we estimate that the total cost for the 30 percent reduction would range from $20 million to $170 million dollars and that the total cost for the 20 percent reduction would range from $14 million to $119 million. We also estimate that the net benefits (at a 3 percent discount rate) range from $994 million to $1,144 million for the 30 percent reduction and from $320 million to $425 million for the 20 percent reduction. For a complete discussion of the benefits and costs see the preliminary regulatory impact analysis that has been placed in the docket for this rulemaking.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). If adopted, the proposal would directly affect motor vehicle manufacturers, second stage and final manufacturers, and alterers. North American Industry Classification System (NAICS) code number 336120, Heavy Duty Truck Manufacturing, prescribes a small business size standard of 1,000 or fewer employees. NAICS code No. 336211, Motor Vehicle Body Manufacturing, prescribes a small business size standard of 1000 or fewer employees.

None of the manufacturers of truck tractors would qualify as a small business. Truck tractors are not sold as incomplete vehicles, but are occasionally modified after certification through the addition of auxiliary axles. Businesses modifying certified vehicles are prohibited from knowingly making inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment that is in compliance with any applicable FMVSS (49 U.S.C. § 30122). Today's rulemaking, if made final, would not increase the cost of complying with this ''make inoperative'' prohibition. Accordingly, there would be no significant impact on small businesses, small organizations, or small governmental units by these amendments. For these reasons, the agency has not prepared a preliminary regulatory flexibility analysis.

C. Vehicle Safety Act

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is

responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms. 49 U.S.C. 30111(a). When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information. 49 U.S.C. 30111(b). The Secretary must also consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths. *Id.* Responsibility for promulgation of Federal motor vehicle safety standards was subsequently delegated to NHTSA. 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

The agency carefully considered these statutory requirements in proposing the amendment to FMVSS No. 121. We believe that the proposed amendments to FMVSS No. 121 would be practicable. As explained above, research data indicate that a 20–30% reduction in stopping distance for heavy trucks could be achieved with currently available brake technologies. Further, we believe that the proposed amendment would advance motor vehicle safety. As explained in detail in the preliminary regulatory impact analysis, the proposal potentially would save 104 to 257 lives a year. Finally, the proposed requirements would amend the stopping distance requirements of FMVSS No. 121 for heavy trucks, but would maintain the test procedures currently specified in that standard. These test procedures provide the objective procedures with which industry is currently complying.

D. National Environmental Policy Act

NHTSA has analyzed these amendments for the purposes of the National Environmental Policy Act and determined that if made final, they would not have any significant impact on the quality of the human environment.

E. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposed rule would have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $109 million annually (adjusted for inflation with base year of 1995). The proposed rule, if issued as a final rule, could require the expenditure of resources above and beyond $100 million annually. However, initial agency estimates indicate that manufacturers could comply with the range proposed, for under $100 million. NHTSA will explore various options based on the response to the public comments. For example, the agency could decide to reduce the stopping distance by 20 percent as opposed to 30 percent.

G. Executive Order 12988 (Civil Justice Reform)

This rule, if made final, would not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule would not establish any new information collection requirements.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Today's rule has been written with that directive in mind, although FMVSS No. 121, in general, is technical in nature. As such, they may require some understanding of technical terminology. We expect that parties directly affected by today's rulemaking, if made final, i.e., vehicle manufacturers, to be familiar with such terminology.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) 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. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

K. Executive Order 13045

Executive Order 13045 applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking does not concern an environmental health or safety risk that disproportionately affects children.

L. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

There are no relevant voluntary consensus standards available at this time. However, we will consider any such standards when they become available.

M. Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, 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 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Chapter V as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.121 would be amended by revising Table II to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

BILLING CODE 4910–59–P

Table II Stopping Distance in Feet

Vehicle speed in miles per hour	Service brake					Emergency brake	
	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9
	(1)	(2)	(3a)	(3b)	(4)	(5)	(6)
20	32	35	38	[27-30]	[28-32]	83	[60-68]
25	49	54	59	[41-47]	[43-50]	123	[92-105]
30	70	78	84	[59-67]	[62-71]	170	[130-149]
35	96	106	114	[80-91]	[85-97]	225	[175-200]
40	125	138	149	[104-119]	[111-126]	288	[228-260]
45	158	175	189	[132-151]	[140-160]	358	[286-327]
50	195	216	233	[163-186]	[173-198]	435	[353-403]
55	236	261	281	[197-225]	[209-240]	520	[426-486]
60	280	310	335	[235-268]	[249-284]	613	[504-580]

Note: (1) Loaded and unloaded buses; (2) Loaded single unit trucks; (3a) Unloaded single unit trucks; (3b) Unloaded truck tractors; (4) Loaded truck tractors tested with an unbraked control trailer; (5) All vehicles except truck tractors; (6) Unloaded truck tractors.

* * * * *

Issued on: December 9, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–24070 Filed 12–14–05; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU43

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List the Queen Charlotte Goshawk as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of opening of public comment period on status review.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the opening of a public comment period to update the 1997 status review for the Queen Charlotte goshawk (*Accipiter gentilis laingi*), a subspecies of the northern goshawk that lives in the temperate rainforests of Southeast Alaska and insular British Columbia. This update has been initiated in response to a recent Court order remanding a previous 12-month finding with instructions to determine if Vancouver Island, British Columbia, Canada, is a significant portion of this goshawk's range and, if so, to determine whether the bird is endangered or threatened under the Endangered Species Act of 1973, as amended. This public comment period will allow all interested parties an opportunity to provide information on the status of the subspecies throughout its range, thereby assisting us in evaluating the significance of the Vancouver Island population of the goshawk in relation to the taxon as a whole.

DATES: Comments must be submitted to us on or before February 13, 2006.

ADDRESSES: If you wish to comment, you may submit your comments and materials by any one of the following methods:

1. You may submit written comments and information by mail to: Queen Charlotte Goshawk Comments, U.S. Fish and Wildlife Service, 3000 Vintage Blvd., Suite 201, Juneau, AK 99801–7125.

2. You may hand-deliver written comments and information to our Juneau Fish and Wildlife Field Office, 3000 Vintage Blvd., Room 260.

3. You may fax your comments to (907) 586–7099.

4. You may send your comments by electronic mail (e-mail) directly to the Service at *QCGoshawk@fws.gov,* or to the Federal eRulemaking Portal at *http://www.regulations.gov.* All submissions must include the identification number RIN 1018–AU43. Please include ''Attn: Queen Charlotte Goshawk'' in the beginning of your message, and do not use special characters or any form of encryption. Electronic attachments in standard formats (such as .pdf or .doc) are acceptable, but please name the software necessary to open any attachments in formats other than those given above. Also, please include your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described above. In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above.

FOR FURTHER INFORMATION CONTACT: Steve Brockmann at the above address (telephone: (907) 780–1181; e-mail: *steve_brockmann@fws.gov).*

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this updated status review will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, concerned governmental agencies, the scientific community, industry, or any other interested party are hereby solicited.

We are opening a 60-day comment period to allow all interested parties an opportunity to provide information on the status of the Queen Charlotte goshawk throughout its range, including:

1. Taxonomy, distribution, habitat selection, food habits, population density and trends, habitat trends, and effects of forest management on goshawks;

2. Any information pertinent to determining whether Vancouver Island may constitute a significant portion of the range of the subspecies, such as:

a. Any information pertinent to whether and how the threats to goshawks on Vancouver Island affect the survival and persistence of Queen Charlotte goshawks elsewhere (Alaska, Queen Charlotte Islands);

b. Any information concerning the historical value of the habitat on Vancouver Island, including the uniqueness or importance for other reasons (such as breeding, feeding, or suitability for population expansion) of the habitat on Vancouver Island to the subspecies;

c. To what extent the habitat on Vancouver Island contributes to the representation, resilience, or redundancy of the subspecies as a whole;

3. Information relevant to the accuracy of our 1997 status review; and

4. Information relevant to whether or not there are any populations of the subspecies that may qualify as distinct population segments.

We will base our finding on a review of the best scientific and commercial data available, including all information received during the public comment period.

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

All comments and materials received will be available for public inspection, by appointment, during normal business hours at our Juneau Fish and Wildlife Field Office at the above address.

Background

On May 9, 1994, the U. S. Fish and Wildlife Service received a petition from eight conservation groups and two individuals to list the Queen Charlotte goshawk as endangered. Logging of old-growth forest, where the bird nests and forages, was the primary threat identified. On August 26, 1994, we published our 90-day finding that the petition presented substantial information indicating that listing may be warranted, opened a public comment period, and initiated a status review to determine whether listing the subspecies was warranted (59 FR 44124). Following our status review, we determined that listing the subspecies under the Act was not warranted and subsequently published our finding in the **Federal Register** on June 29, 1995 (60 FR 33784). We expressed concern for long-term survival of the bird under the existing management plan for the Tongass National Forest (covering over 90 percent of Southeast Alaska), but acknowledged that a new management

plan was being drafted that was expected to provide improved protection for the subspecies. That finding was challenged in Federal District Court in Washington DC, in a suit filed on November 17, 1995, by 8 of the original 10 petitioners, plus 2 additional conservation organizations and 1 additional individual. The Court granted a summary judgment for the plaintiffs on September 25, 1996, holding that we should not have relied on a draft revision of the 1979 Tongass Land Management Plan ''to provide sanctuary for the goshawk,'' remanded the decision to us, and instructed us to make a listing determination based on the existing Forest Plan, *Southwest Center for Biological Diversity* v. *Babbitt,* 939 F. Supp. 2d 49 (D.D.C. 1996). The Court agreed to a deadline of May 31, 1997, to complete this analysis. On May 23, 1997, however, the Forest Service released a new plan, the Tongass Land and Resources Management Plan. We requested and received an extension from the court until August 31, 1997, to review the petitioned action and the status of the subspecies in light of the new plan. On September 4, 1997, we published our new finding that listing of the subspecies under the Act was not warranted (62 FR 46710), confirming our previous determination. This finding was challenged in District Court, and a decision was issued July 20, 1999. The finding was remanded to us, with instructions to provide a more accurate and reliable population estimate, and to consider a 1999 revision of the 1997 Tongass Land and Resources Management Plan. We appealed that decision, prevailed, and the case was remanded back to the District Court, *Southwest Center for Biological Diversity* v. *Babbitt,* 215 F. 3d 58 (D.C. Cir. 2000). On July 29, 2002, Magistrate Facciola, of the D.C. District Court, issued his findings and recommendations, *Southwest Center for Biological Diversity* v. *Norton,* 2002 WL 1733618 (D.D.C. July 29, 2002). Magistrate Facciola found that: (1) We had fulfilled the requirement of the Act to use the best scientific data available; (2) the ''not warranted'' determination was due deference; (3) our determination that the Queen Charlotte goshawk would persist in Alaska and certain Canadian islands was not unreasonable; (4) Vancouver Island, which constituted one-third of the subspecies' geographic range, was a ''significant portion'' of the subspecies'' range; and (5) our failure to make a specific finding as to conservation of the subspecies on an island which constituted one-third of the subspecies' geographic range was material omission.

On May 24, 2004, Judge Urbina, of the D.C. District Court, issued an order that adopted Magistrate Facciola's Findings and Recommendations in total, except for the Magistrate's finding that Vancouver Island constituted a significant portion of the range for Queen Charlotte goshawk. Instead, Judge Urbina directed us, upon remand, to reconsider and explain any determination regarding whether or not Vancouver Island is indeed a significant portion of the range, and assess whether the Queen Charlotte goshawk is endangered or threatened on Vancouver Island. This opening of the public comment period is consistent with Judge Urbina's order as we are re-evaluating the status of the subspecies in relation to Vancouver Island and as a taxon as a whole.

Author

The primary author of this document is Steve Brockmann, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Juneau Fish and Wildlife Field Office, Juneau, Alaska.

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

Dated: December 7, 2005.

Marshall Jones Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 05–24045 Filed 12–14–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 051130316–5316–01; I.D. 110905C]

RIN 0648–AT21

Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2006 Specifications

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

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes specifications for the 2006 Atlantic herring fishery, which are the same as the specifications implemented in 2005. The regulations for the Atlantic herring fishery require NMFS to publish specifications for the upcoming year and to provide an opportunity for public comment. The intent of the specifications is to conserve and manage the Atlantic herring resource and provide for a sustainable fishery.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on January 17, 2006.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and Essential Fish Habitat Assessment are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.gov*.

Written comments on the proposed rule may be sent by any of the following methods:

- Mail to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments–2006 Herring Specifications'';
- Fax to Patricia A. Kurkul 978–281–9135;
- E-mail to the following address: *Herr2006Specs@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments–2006 Herring Specifications;'' or
- Electronically through the Federal e-Rulemaking portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, 978–281–9259, e-mail at *eric.dolin@noaa.gov*, fax at 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) require the New England Fishery Management Council's (Council) Atlantic Herring Plan Development Team (PDT) to meet at least annually, no later than July each year, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for consideration by the Council's Atlantic Herring Oversight Committee: Allowable biological catch (ABC), optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture

processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), and reserve (if any). The PDT and PRT also recommend the total allowable catch (TAC) for each management area and subarea identified in the FMP. As the basis for its recommendations, the PDT reviews available data pertaining to: Commercial and recreational catch; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. Recommended specifications are presented to the oversight committee and the Council in order to make a recommendation to NMFS. NMFS reviews the Council recommendation, and may modify it if necessary to insure that it is consistent with the criteria in the FMP and other applicable laws.

In 2004, the Council proposed specifications that would have set OY at 180,000 mt. It also voted to maintain the 2005 specifications for 2006, unless stock and fishery conditions changed substantially. Upon review of the specifications package submitted by the Council for 2005, NMFS decided that the justification for setting the OY at 180,000 mt was not persuasive, given the recent history of landings in the fishery and concerns about allocating TALFF. As a result, NMFS proposed setting the OY at 150,000 mt, and readjusting the TACs in Areas 2 and 3 to reflect that change. NMFS also did not find the Council's argument for setting USAP at zero to be persuasive, noting that such an allocation would favor one segment of the U.S. processing sector over another, without any justifiable reasons based on conservation objectives. USAP could also provide an additional outlet for harvesters and, therefore, increase the benefits to the U.S. industry. As a result, NMFS proposed setting USAP at 20,000 mt for 2005. The modified alternative proposed by NMFS was added to and fully analyzed in the 2005 specification package's EA/RIR/IRFA. That package analyzed and evaluated the environmental, social, and economic impacts of maintaining the same specifications for 2 years. The 2005 specifications assumed that the PDT would update and evaluate stock and fishery information during 2005, and the Council and NMFS might determine, based on the review by the Herring PDT, that no adjustments to the specifications were necessary for the 2006 fishing year. The PDT completed a comprehensive review of all herring related stock and fishery data as part of the development of the DSEIS for Amendment 1 to the FMP. It concluded that stock and fishery conditions have remained relatively constant. It found no reason to modify the specifications, as implemented by NMFS for 2005, for 2006. At its September 2005 meeting, the Council agreed and voted to recommend that the 2005 specifications, as implemented by NMFS, be maintained for 2006. Given that there has been no significant change in the herring fishery over the past year, and that the 2005 specifications package fully evaluated the impacts of maintaining the specifications for 2 years, NMFS concurs with the Council's recommendation.

Proposed 2006 Specifications

NMFS proposes the specifications and Area TACs contained in the following table.

PROPOSED SPECIFICATIONS AND AREA TACS FOR THE 2006 ATLANTIC HERRING FISHERY

Specification	Proposed Allocation (mt)
ABC	220,000.
OY	150,000.
DAH	150,000.
DAP	146,000.
JVPt	0.
JVP	0.
IWP	0.
USAP	20,000 (Areas 2 and 3 only).
BT	4,000.
TALFF	0.
Reserve	0.
TAC - AREA 1A	60,000 (January 1 May 31, landings cannot exceed 6,000).
TAC - Area 1B	10,000.
TAC - Area 2	30,000 (No Reserve).
TAC - Area 3	50,000.

The proposed measures are discussed here briefly. For a complete discussion of the development of and rationale for the specifications, please refer to the proposed rule for the 2005 specifications, published January 31, 2005 (70 FR 4808).

An ABC of 220,000 mt is proposed, consistent with the MSY proxy recommended in Amendment 1 to the FMP, which is currently being developed. The 220,000 mt proxy recommended in Amendment 1 is intended to be a temporary and precautionary placeholder for MSY until the next stock assessment for the Atlantic herring stock complex is completed. Because of the importance of ABC as a means of determining the other values in the specifications, it is discussed in the specifications, even though it is not a value that is set by the specification process.

The FMP specifies that OY will be less than or equal to ABC minus the expected Canadian catch (C) from the stock complex. The estimate of C that is deducted from ABC will be no more than 20,000 mt for the New Brunswick weir fishery and no more than 10,000 mt for the Georges Bank fishery. With ABC set at 220,000 mt, OY could be less than or equal to 190,000 mt if the maximum catch is assumed for the Canadian herring fishery. The FMP also states that the establishment of OY will include consideration of relevant economic, social, and ecological factors and that, for this reason, OY may be less than ABC C. In addition, the Herring PDT recommended that OY be specified at a level lower than ABC for biological and ecological reasons.

As in 2005, OY is proposed to be specified at 150,000 mt, a level that can be fully harvested by the domestic fleet, thereby precluding the specification of a TALFF. This will enable the U.S. Atlantic herring industry to expand and will yield positive social and economic benefits to U.S. harvesters and processors.

NMFS proposes setting DAH at 150,000 mt. The highest level of landings in recent years was in 2001, when they reached 121,332 mt. The proposed DAH of 150,000 mt would allow a 23–percent increase in landings as compared to 2001, and reflect fishery performance in recent years, while at the same time giving the fishery an opportunity to expand. The proposed Area TACs would remain the same as they were in 2005. These area allocations are intended to permit the fishery to increase landings above the highest levels achieved in recent years. The highest recent landings in Area 2 were 27,198 mt in 2000; thus, the allocation would allow the fishery to slightly exceed that level. The highest recent landings in Area 3 were 35,079 mt in 2001; thus, the allocation would allow the fishery to exceed that level by a considerable amount because this is the area most likely to see expanded harvests.

The regulations, at § 648.200(e), allow for inseason adjustments of the herring specifications. Thus, if the herring fishery during the 2006 fishing year expands more than anticipated, the OY,

the DAH, the DAP, and the area TACs could be increased to enable the fishery to perform to its fullest potential. Such increases would be constrained by the analysis that the Council included in the specification recommendations. That means that DAH and OY could be increased to a maximum of 180,000 mt, the DAP could be increased to a maximum of 176,000 mt, and the Area 2 TAC and the Area 3 TAC could be increased to 50,000 mt and 60,000 mt, respectively, which are the highest levels that the Council originally recommended and analyzed for each of these measures.

Since DAH is proposed to be set at 150,000 mt (of which 4,000 mt would be allocated for BT), DAP is proposed to be specified at 146,000 mt. It is certainly possible, given the capacity of the current harvesting fleet, the potential for market expansion to occur, and the expressed intent (made clear through public testimony) of the U.S. industry to increase its participation in the Atlantic herring fishery, that processors will utilize the recommended DAP. Because the Council's recommended DAP is sufficient to process the entire DAH (minus the BT), the Council and NMFS propose setting JVP at zero. Future JVP operations would likely compete with U.S. processors for product, which could have a substantial negative impact on domestic facilities in a market-driven fishery. This is consistent with the following relationship, which is specified in the FMP: DAH = DAP + JVPt + BT.

NMFS proposes setting USAP at 20,000 mt in Areas 2 and 3 only. USAP could provide an additional outlet for harvesters and, therefore, increase the benefits to the U.S. industry.

Classification

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

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, which describes the economic impacts this proposed rule, if adopted, would have on small entities. A copy of the IRFA can be obtained from the Council or NMFS (see **ADDRESSES**) or via the Internet at *http://www.nero.noaa.gov*. A summary of the analysis follows:

Statement of Objective and Need

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

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

During the 2003 fishing year, 154 vessels landed herring, 38 of which averaged more than 2,000 lb (907 kg) of herring per trip. There are no large entities, as defined in section 601 of the RFA, participating in this fishery. Therefore, there are no disproportionate economic impacts between large and small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

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

Minimizing Significant Economic Impacts on Small Entities

Impacts were assessed by the Council and NMFS by comparing the proposed measures to the Atlantic herring landings made in 2003. The proposed specifications are not expected to produce a negative economic impact to vessels prosecuting the fishery because it allows for landings levels that are significantly higher than the average landings achieved by the fishery in recent years. The proposed 2006 specifications should allow for incremental growth in the industry, while taking into consideration biological uncertainty.

The specification of OY and DAH is proposed to be 150,000 mt for 2006. At this level, there could be an increase of up to 50,000 mt in herring landings, or $7,150,000 in revenues, based on an average price of $143/mt. This could allow individual vessels to increase their profitability under the proposed 2006 specifications, depending on whether or not new vessels enter the fishery (the herring fishery will remain an open-access fishery for the 2006 fishing year). The magnitude of economic impacts related to the 146,000–mt specification of DAP will depend on the shoreside processing sector's ability to expand markets and increase capacity to handle larger amounts of herring during 2006.

The potential loss associated with eliminating the JVPt allocation (20,000 mt for 2003 and 2004) could approximate $2.9 million (based on an average price of $143/mt) if all of the 20,000–mt allocation would have been utilized (10,000 mt for JVP and 10,000 mt for IWP). However, very little of the 10,000–mt JVP allocation was utilized in 2002 and 2003 and, as of August 2004, no JVP activity for herring had occurred during the 2004 fishing year. The Council received no indication that demand for the JVP allocation will increase in 2006. As a result, no substantial economic impacts are expected from reducing the JVP allocation to 0 mt in 2006, as vessels that sold fish in the past to JVP vessels could sell to U.S. processors.

The Area 1A and 1B TACs of 60,000 mt and 10,000 mt, respectively, have been unchanged since the 2000 fishery. In 2002 and 2003, the Area 1A TAC for the directed herring fishery was fully utilized and is expected to be fully utilized for the 2006 fishery. Therefore, no change is expected in profitability of vessels from the 2006 Area 1A specification. Since only 4,917 mt of herring were harvested in Area 1B in 2003, the proposed 2006 specification of 10,000 mt should allow for increased economic benefits to individual vessels prosecuting the fishery in this management area. The potential economic gains associated with allocating 20,000 mt for USAP could approximate $2.9 million (based on an average price of $143/mt) if all of the 20,000–mt allocation were utilized in 2006.

The Council analyzed four alternatives for OY and the distribution of TACs. One alternative would have retained the specifications implemented during the 2003 and 2004 fishing years, which would have maintained the OY at 180,000 mt. This OY is still roughly 80 percent greater than the average historical landings for this fishery, and therefore that level of OY would not pose a constraint on the fishery. The three other alternatives considered by the Council would set the OY at 150,000 mt. This is still roughly 50 percent greater than the average historical landings for this fishery, and, therefore, that level of OY would not pose a constraint on the fishery. Each of the alternatives that would set the OY at 150,000 mt would establish varying levels for the area TACs.

One alternative would have established the following TACs: Area 1A, 60,000 mt; Area 1B, 10,000 mt; Area 2, 20,000 mt; and Area 3, 60,000 mt. The only area TAC that would be lower than 2003/2004 under this option is the Area 2 TAC. The most recent year in which the landings from this area were greater than 20,000 mt (the proposed TAC) was 2000 (27,198 mt). The average landings from 2001 2003 were 14,300 mt, with 2003 landings at 16,079 mt. Under current market conditions, the new TAC may become constraining if the fishery in 2006 is similar to that in 2000. If this

is the case, then the Area 2 TAC fishing season could end before the end of the year, creating a potential economic constraint on the fishery, especially if vessels are forced to travel farther (increased steaming time) to harvest in Area 3.

Another alternative considered would have established the following TACs: Area 1A, 45,000 mt; Area 1B, 10,000 mt; Area 2, 35,000 mt; and Area 3, 60,000 mt. With a 15,000–mt decrease in the combined Area 1 TACs, the economic impact of this option could be relatively large on vessels in the fishery that depend on herring in Area 1A, especially if those vessels are not able to move to other areas to obtain fish. Even if vessels could fish in other areas, their operating costs would be increased because of increased steaming time. An Area 2 TAC of 35,000 mt proposed under this alternative should not be constraining, given recent landings history.

The final alternative considered would have established the following TACs: Area 1A, 55,000 mt; Area 1B, 5,000 mt; Area 2, 30,000 mt; and Area 3, 60,000 mt. With a 10,000–mt decrease in the combined Area 1 TACs, the impact of this alternative would be very similar to the impact of the prior alternative, although not as severe. An Area 2 TAC of 30,000 mt proposed under this alternative should not be constraining, given recent landings history.

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

Dated: December 9, 2005.

James W. Balsiger,

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

[FR Doc. 05–24079 Filed 12–14–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 70, No. 240

Thursday, December 15, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet at the USDA Service Center in Redding California, on January 4, February 1 and March 1 of 2006. The purpose of this meeting is to discuss proposed projects under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: January 4, February 1 and March 1 of 2006.

ADDRESSES: The meetings will be held at the USDA Service Center, 3644 Avtech Parkway, Redding, California 96002.

FOR FURTHER INFORMATION CONTACT: Michael R. Odle, Public Affairs Officer and RAC Coordinator.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Public input sessions will be provided and individuals will have the opportunity to address the Shasta County Resource Advisory Committee.

Dated: December 7, 2005.

John L. Heibel III,

Acting Forest Supervisor.

[FR Doc. 05–24058 Filed 12–14–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet at the Trinity County Office of Education in Weaverville, California, on January 10, 2006. The purpose of this meeting is to discuss proposed projects under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: January 10, 2006.

ADDRESSES: Trinity County Office of Education, 201 Memorial Drive, Weaverville, California 96093.

FOR FURTHER INFORMATION CONTACT: Michael R. Odle, Public Affairs Officer and RAC Coordinator.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input sessions will be provided and individuals will have the opportunity to address the Trinity County Resource Advisory Committee.

Dated: December 7, 2005.

John L. Heibel III,

Acting Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. 05–24059 Filed 12–14–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket T–4–2005)

Foreign–Trade Zone 26 – Atlanta, Georgia, Application for Temporary/Interim Manufacturing Authority, Perkins Shibaura Engines LLC, (Compact Diesel Engines), Griffin, Georgia

An application has been submitted to the Executive Secretary of the Foreign–Trade Zones Board (the Board) by Georgia Foreign–Trade Zone, Inc., grantee of FTZ 26, requesting temporary/interim manufacturing (T/IM) authority within Site 6 of FTZ 26, at the facilities of Perkins Shibaura Engines LLC (Perkins) located in Griffin, Georgia. The application was filed on December 8, 2005.

The Perkins facility (135 employees; annual capacity for 30,000 engines) is located within Site 6 of FTZ 26 at 325 Green Valley Road, Griffin, Georgia. Under T/IM procedures, the company has requested authority to manufacture compact diesel engines (HTS 8408.90; these products enter the United States duty free). The company may source the following input items from abroad for manufacturing the finished products under T/IM authority, as delineated in Perkins' application: fuel pumps, injectors, and water pumps (HTS 8413.30); crankshafts and camshafts (8483.10); flywheels and pulleys (8483.50); oil/fuel filter (8421.23); starter motors (8511.40); glowplugs (8511.80); regulating valves (8481.80); rubber seals and O–rings (4016.93); fasteners (7318.15); and bearing housings/plain shaft bearings (8483.30). Duty rates on these inputs range from duty–free to 8.5%. T/IM authority could be granted for a period of up to two years. Perkins has also submitted a request for permanent FTZ manufacturing authority (for which Board filing is pending), which includes ten additional inputs.

FTZ procedures would allow Perkins to elect the finished–product duty rates for the ten imported production inputs listed above. The company indicates that it would also realize logistical/paperwork savings, duty–deferral savings, and savings on exports under FTZ procedures. The company may realize duty deferral savings on the ten additional inputs mentioned above if they are stored in the FTZ until introduction into the manufacturing process.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign–Trade Zones Board, U.S. Department of Commerce, Franklin Court Building - Suite 4100W, 1099 14th St. NW, Washington, D.C. 20005; or

2. Submissions via the U.S. Postal Service: Foreign–Trade Zones Board, U.S. Department of Commerce, FCB - Suite 4100W, 1401 Constitution Ave. NW, Washington, D.C. 20230.

The closing period for their receipt is January 17, 2006.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above.

Dated: December 8, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–24090 Filed 12–14–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 61–2005)

Foreign–Trade Zone 35 -- Philadelphia, Pennsylvania, Expansion of Facilities -- Subzone 35B, Merck & Company, Inc., (Pharmaceutical Products), West Point, Pennsylvania

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Philadelphia Regional Airport Authority, grantee of FTZ 35, requesting to expand the subzone (Subzone 35B) at the Merck & Company, Inc. (Merck) facility in West Point, Pennsylvania. The application was submitted pursuant to the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board. It was formally filed on December 7, 2005.

Subzone 35B was approved by the Board on November 14, 1994 at a single site (106 bldgs./6,317,280 sq. ft. on 405 acres) located at Sunneytown Pike and Broad Street, in West Point (Montgomery County), Pennsylvania, with authority granted for the manufacture of finished pharmaceuticals (Board Order 708, 59 FR 60604, 11/25/94), and expanded on 4/5/01 (Board Order 1153, 66 FR 19918, 4/18/01). Merck is now proposing to expand production capacity under FTZ procedures by adding 168 buildings totaling 1,227,192 sq. ft. but reducing total acreage by 8 acres. The expanded subzone would then include 274 buildings consisting of 7,544,472 sq. ft. on 397 acres.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services*: Foreign–Trade Zones Board, U.S. Department of Commerce, Franklin Court Building–Suite 4100W, 1099 14th Street, NW, Washington, DC 20005; or,
2. *Submissions via the U.S. Postal Service*: Foreign–Trade Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Avenue, NW, Washington, DC 20230.

The closing period for their receipt is February 13, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 28, 2006).

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce, Export Assistance Center, The Curtis Center, Suite 580 West, 601 Walnut Street, Independence Square West, Philadelphia, PA 19106.

Dated: December 8, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–24086 Filed 12–14–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Dockets 62–2005 and 63–2005)

Foreign–Trade Zone 61-- San Juan, Puerto Rico, Expansion of Facilities-- Subzone 61D, 61E, Merck Sharpe & Dohme Quimica De Puerto Rico, Inc., (Pharmaceutical Products), Arecibo and Barceloneta, Puerto Rico

Applications have been submitted to the Foreign–Trade Zones Board (the Board) by the Puerto Rico Trade & Export Company, grantee of FTZ 61, requesting to expand the subzones at the Merck, Sharp & Dohme Quimica de Puerto Rico, Inc. (MSDQ), facilities in Arecibo (Subzone 61D, Docket 62–2005), and Barceloneta (Subzone 61E, Docket 63–2005), Puerto Rico. The applications were submitted pursuant to the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board. They were formally filed on December 7, 2005.

Subzone 61D was approved by the Board on May 12, 1995 at a single site (3 bldgs./286,000 sq. ft. on 38 acres) located at Road PR–2, Km. 60, in the municipality of Arecibo, Puerto Rico, with authority granted for the manufacture of finished pharmaceuticals (Board Order 741, 60 FR 27272, 5/23/95), and expanded on 11/9/00 (Board Order 1125, 65 FR 69731, 11/20/00). MSDQ is now proposing to expand production capacity under FTZ procedures by adding acreage and 1 building and expanding the existing buildings. The expanded subzone would then include 4 buildings consisting of 334,778 sq. ft. on 53 acres.

Subzone 61E was approved by the board on May 12, 1995 at a single site (92 bldgs./504,756 sq. ft. on 221 acres) located at Road PR–2, Km. 57, in the municipality of Barceloneta, Puerto Rico, with authority granted for the manufacture of pharmaceutical bulk chemicals and intermediates used in Merck's human and animal health products and finished animal health and agricultural chemical products for its AgVet Division (agricultural/veterinary) (Board Order 742, 60 FR 27272, 5/23/95), and expanded on 11/9/00 (Board Order 1126, 65 FR 69731, 11/20/00). MSDQ is now proposing to expand production capacity under FTZ procedures by adding acreage and 6 buildings and expanding an existing building. The expanded subzone would then include 98 buildings consisting of 598,415 sq. ft. on 257 acres.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the applications and report to the Board.

Public comment on the applications is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services*: Foreign–Trade Zones Board, U.S. Department of Commerce, Franklin Court Building–Suite 4100W, 1099 14th Street, NW, Washington, DC 20005; or,
2. *Submissions via the U.S. Postal Service*: Foreign–Trade Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Avenue, NW, Washington, DC 20230.

The closing period for their receipt is February 13, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 28, 2006).

A copy of the applications and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce, Export Assistance Center, 525 F.D. Roosevelt Ave., Suite 905, San Juan, PR 00918.

Dated: December 8, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–24084 Filed 12–14–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 60–2005)

Foreign–Trade Zone 185 -- Culpepper County, Virginia, Expansion of Facilities -- Subzone 185C, Merck & Company, Inc., (Pharmaceutical Products), Elkton, Virginia

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Culpepper County Chamber of Commerce, grantee of FTZ 185, requesting to expand the subzone (Subzone 185C) at the Merck & Company Inc. (Merck), facility in Elkton, Virginia. The application was submitted pursuant to the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board. It was formally filed on December 7, 2005.

Subzone 185C was approved by the Board on November 14, 1994 at a single site (82 bldgs./624,221 sq. ft. on 1,333 acres) located on Route 340S, in Elkton (Rockingham County), Virginia, with authority granted for the manufacture of finished pharmaceuticals (Board Order 710, 59 FR 60603, 11/25/94), and expanded on 04/05/01 (Board Order 1156, 66 FR 19919, 04/18/01). Merck is now proposing to expand production capacity under FTZ procedures by adding acreage and 2 additional buildings totaling 137,047 sq. ft. The expanded subzone would then include 99 buildings consisting of 1,903,718 sq. ft. on 1,433 acres.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services*: Foreign–Trade Zones Board, U.S. Department of Commerce, Franklin Court Building–Suite 4100W, 1099 14th Street, NW, Washington, DC 20005; or,
2. *Submissions via the U.S. Postal Service*: Foreign–Trade Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Avenue, NW, Washington, DC 20230.

The closing period for their receipt is February 13, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 28, 2006).

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the Culpepper County Chamber of Commerce, 133 West Davis Drive, Culpepper, Virginia 22701.

Dated: December 8, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–24085 Filed 12–14–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–899]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 15, 2005.

FOR FURTHER INFORMATION CONTACT: Jon Freed or Michael Holton, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–3818 or 482–1324, respectively.

SUMMARY: On November 7, 2005, the Department of Commerce (''the Department'') published its affirmative preliminary determination in this proceeding. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 70 FR 67412 (November 7, 2005) (''*Preliminary Determination*''). While the Department did not receive any allegations of ministerial errors in the *Preliminary Determination*, the Department inadvertently stated an inaccurate manufacturer/producer name in the provided combination rate, and inadvertently failed to include one combination rate.

In the *Preliminary Determination*, the Department stated it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. Thus, we granted Jiangsu Animal By–products Import & Export Group Corp. (''Jiangsu By–products'') (*i.e.*, a separate rate applicant) a separate rate and calculated a combination rate for Jiangsu By–products. However, in our Weighted–Average Dumping Margins section, the Department inadvertently stated an inaccurate manufacturer/producer name in the provided combination rate for Jiangsu By–products, and inadvertently failed to include one combination rate for Jiangsu By–products. Therefore, we are correcting the Weighted–Average Dumping Margins section to include the additional combination rate and to correct the manufacturer/producer name.

SUPPLEMENTARY INFORMATION:

Scope

The products covered by this investigation are artist canvases regardless of dimension and/or size, whether assembled or unassembled, that have been primed/coated, whether or not made from cotton, whether or not archival, whether bleached or unbleached, and whether or not containing an ink receptive top coat. Priming/coating includes the application of a solution, designed to promote the adherence of artist materials, such as paint or ink, to the fabric. Artist canvases (*i.e.*, pre–stretched canvases, canvas panels, canvas pads, canvas rolls (including bulk rolls that have been primed), printable canvases, floor cloths, and placemats) are tightly woven prepared painting and/or printing surfaces. Artist canvas and stretcher strips (whether or not made of wood and whether or not assembled) included within a kit or set are covered by this proceeding.

Artist canvases subject to this investigation are currently classifiable under subheadings 5901.90.20.00 and 5901.90.40.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Specifically excluded from the scope of this investigation are tracing cloths, ''paint–by-number'' or ''paint–it-yourself'' artist canvases with a copyrighted preprinted outline, pattern, or design, whether or not included in a painting set or kit.[1] Also excluded are stretcher strips, whether or not made from wood, so long as they are not incorporated into artist canvases or sold as part of an artist canvas kit or set. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Amended Preliminary Determination

As a result of our correction to the *Preliminary Determination*, we have determined that the following

[1] Artist canvases with a non-copyrighted preprinted outline, pattern, or design are included in the scope, whether or not included in a painting set or kit.

weighted–average percentage dumping margins apply to imports of certain artist canvas from the PRC exported by Jiangsu By–products.

ARTIST CANVAS FROM THE PRC - WEIGHTED–AVERAGE DUMPING MARGINS

Exporter	Producer	Weighted–Average Deposit Rate
Jiangsu Animal By–products Import & Export Group Corp. ..	Wuxi Yinying Stationery and Sports Products Co. Ltd. Corp.	70.28
Jiangsu Animal By–products Import & Export Group Corp. ..	Su Yang Yinying Stationery and Sports Products Co., Ltd. Corp..	70.28
China–Wide Rate	.....	264.09

The collection of bonds or cash deposits and suspension of liquidation will be revised accordingly in accordance with section 733(d) of the Tariff Act of 1930, as amended (''the Act''). For all other imports of certain artist canvas from the PRC, the cash deposit rates remain as listed in the Preliminary Determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (''ITC'') of our amended preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of the original preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.224(e).

Dated: December 9, 2005.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–7400 Filed 12–14–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–809]

Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Argentina: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 28, 2005, the U.S. Department of Commerce (''the Department'') published a notice of initiation of an administrative review of the antidumping duty order on small diameter seamless carbon and alloy steel standard, line and pressure pipe (''seamless line and pressure pipe'') from Argentina. The review covers one manufacturer/exporter, Siderca S.A.I.C. The period of review (''POR'') is August 1, 2004, through July 31, 2005. Following the receipt of a certification of no shipments by Siderca S.A.I.C., we notified interested parties of the Department's intent to rescind this review and provided an opportunity for parties to comment on the rescission. We received no comments. Therefore, we are rescinding this administrative review.

EFFECTIVE DATE: December 15, 2005.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Abdelali Elouaradia; AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8029 and (202) 482–1374, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2005, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on seamless line and pressure pipe from Argentina for the period August 1, 2004, through July 31, 2005. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding or Suspended Investigation*, 70 FR 44085 (August 1, 2005). On August 31, 2005, United States Steel Corporation (''U.S. Steel''), a domestic producer of the subject merchandise, made a timely request that the Department conduct an administrative review of Siderca S.A.I.C. (''Siderca''). On September 28, 2005, in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act''), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Notice of Initiation of Antidumping Duty and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005).

On October 13, 2005, the Department issued its antidumping duty questionnaire to Siderca. On November 7, 2005, Siderca submitted a letter to the Department, certifying that the company made no shipments or entries for consumption in the United States of the subject merchandise during the POR. Additionally, Siderca also provided certification to the Department that the company's U.S. affiliate, Tenaris Global Services U.S.A. Corporation (''Tenaris''), also did not sell, enter, or import subject merchandise for consumption into the United States during the POR.

Scope of the Order

The antidumping duty order on imports from Argentina, covers small diameter seamless carbon and alloy standard, line, and pressure pipes (''seamless pipes'') produced to the American Standard for Testing and Materials (''ASTM'') standards A–335, A–106, A–53, and American Petroleum Institute (''API'') standard API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. For purposes of this order, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot–finished or cold–drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe, or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non–standard wall thicknesses are commonly referred to as

tubes. The seamless pipes subject to this order are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

The following information further defines the scope of this order, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses

Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM standard A–106 may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (''ASME'') code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification. Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers. The primary application of ASTM A–106 pressure pipes and triple certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical–fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non–covered specification. Standard, line and pressure applications and the above–listed specifications are defining characteristics of the scope of this order. Therefore, seamless pipes meeting the physical description above, but not produced to the A–335, A–106, A–53, or API 5L standards shall be covered if used in a standard, line or pressure application. For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this order.

Specifically excluded from the scope of this order are boiler tubing and mechanical tubing, if such products are not produced to A–335, A–106, A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished OCTG are excluded from this order, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this order when used in standard, line or pressure applications. Finally, also excluded from this order are redraw hollows for cold–drawing when used in the production of cold–drawn pipe or tube. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Rescission of the Administrative Review

As noted above, on November 7, 2005, Siderca submitted a letter to the Department indicating that it did not have any shipments or entries of subject merchandise during the POR. The Department conducted an internal customs data query to confirm that Siderca did not export or produce subject merchandise entered for consumption into the United States during the POR. The customs data showed no entries during the POR of subject merchandise manufactured/exported by Siderca. On November 9, 2005, the Department notified the interested domestic parties of its intent to rescind this administrative review and requested that parties submit comments by November 21, 2005, on the intended rescission. *See* Memorandum to the File from Patrick Edwards, Case Analyst, dated November 9, 2005. We received no comments from outside parties.

Based upon Siderca's explanation and the evidence on the record, we are satisfied that Siderca made no exports of subject merchandise that were entered for consumption during the POR. Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. Therefore, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(3).

We are issuing and publishing this notice in accordance with section 751(a)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: December 8, 2005.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–7399 Filed 12–14–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030602141–5303–32]

Financial Assistance To Establish New Cooperative Science Centers Under NOAA's Educational Partnership Program (EPP) With Minority Serving Institutions in Atmospheric, Oceanic and Environmental Sciences, Living Marine Resources Science and Management, and Remote Sensing Technology at Minority Serving Institutions

AGENCY: Office of Education, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of availability of funds and solicitation for proposals for these funds.

SUMMARY: The purpose of this document is to advise the public that NOAA's Educational Partnership Program is soliciting new accredited post secondary minority serving institutions (MSI)—Cooperative Science Center proposals. These Centers are to establish partnerships between the accredited post secondary MSIs and NOAA. The partnership goal is to expand the institution's training and research capabilities and supporting program development. The developed programs will support NOAA's mission. The Cooperative Centers must establish in the NOAA core science areas: Atmospheric, oceanic and environmental sciences; living marine resources science and management; and remote sensing technology.

The EPP/MSI is a competitive program designed to strengthen and enhance the research and training capabilities and to support the development of programs directly related to NOAA's mission at MSIs. The EPP is designed to enhance NOAA's capability to increase environmental literacy by establishing partnerships with academia, the private sector, and other Federal, State, Tribal and local agencies. Thus, the funding opportunity is intended to engage the MSI academic community in training and collaborative research across the spectrum of atmospheric, oceanic and environmental sciences, living marine resources science and management, and remote sensing technology in support of NOAA's mission.

DATES: Applications must be received by NOAA Educational Partnership Program (EPP) no later than 2 p.m. (eastern standard time), February 13, 2006.

ADDRESSES: Applications submitted in response to this announcement are strongly encouraged to submit through the Grants.gov Web site. Electronic access to the Full Funding Opportunity Announcement for this program is available via the Grants.gov Web site: *http://www.grants.gov.* The announcement will also be available at the NOAA EPP Web site *http://epp.noaa.gov* or by contacting the program officials identified below. Applicants must comply with all requirements contained in the full funding opportunity announcement. If Internet access is unavailable, paper applications (a signed original and two copies) may be submitted to the Educational Partnership Program at the following address: NOAA/OAR/EPP, 1315 East West Highway, Room 10600, Silver Spring, Maryland 20910. No facsimile applications will be accepted. Institutions are encouraged to submit Letters of Intent to NOAA/EPP within 30 days of this announcement to aid in planning the review processes.

Letters of Intent may be submitted via e-mail to *Jacqueline.J.Rousseau@noaa.gov* or *Meka.Laster@noaa.gov.* Information should include a general description of the Center proposal and participating institutions.

FOR FURTHER INFORMATION CONTACT: Jacqueline J. Rousseau, Program Director at 301–713–9437 ext. 124 or *Jacqueline.J.Rousseau@noaa.gov.* The alternative contact is Meka E. Laster at 301–713–9437 ext. 147 or *Meka.laster@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Summary Description

NOAA is committed to recruiting and retaining underrepresented community employees. NOAA is committed to training students in NOAA related sciences and conduct the ongoing mission of the agency. Therefore, the agency established a program aimed at MSI partnering that train and graduate students in the areas of atmospheric, oceanic and environmental sciences, fisheries sciences, and management, and remote sensing technology. Since approximately 40% of minority students receive their undergraduate degrees at MSIs, direct collaboration with MSIs is an effective way to increase the number of minority students trained and graduated. The MSI students receive NOAA-related science degrees and may engage in research and pursue careers compatible with the Agency's mission.

The National Science Foundation (NSF) Science and Engineering Indicators 2004 Report furnishes the doctoral and master's degree statistics for selected years, 1994–2003. The sciences include earth, atmospheric, and ocean sciences. The minority student statistics are below the national average. For example, the 2004 NSF report lists 26,413 U.S. citizen, science and engineering doctoral degrees. However, the number of minority student graduates awarded doctoral degrees includes:

- 1708 African Americans;
- 1270 Hispanics;
- 133 American Indian/Alaskan Natives;
- 1417 Asian/Pacific Islanders.

The 474 earth, atmospheric and ocean sciences doctoral degrees were awarded to:

- 15 African Americans;
- 13 Hispanics;
- 2 American Indians and Alaskan Natives;
- 10 to Asian/Pacific Islanders.

Additionally, minority group master's degrees statistics are disproportionately low. With such a limited pool of potential employees from underrepresented communities trained in NOAA-related sciences, it is important that NOAA seek new ways to make students aware of the mission of the agency and to support activities that increase opportunities for students trained in NOAA-related sciences.

Proposals for the Cooperative Science Centers shall support NOAA's mission as defined in NOAA's Strategic Plan—located at *http://www.noaa.gov*—.

The Educational Partnership Program supports the

- NOAA Strategic Plan.
- U.S. Ocean Action Plan.
- NOAA Education Plan.
- DOC/NOAA Succession Planning and Management Program Plan.

Institutions may compete for an award to establish a Cooperative Science Center based on the following criteria:

Atmospheric Cooperative Science Center: Atmospheric Cooperative Science Center proposals should address the ability to conduct collaborative research in numerical weather prediction, data assimilation, climate modeling, climate analysis and prediction, water resources, and/or studies that lead to improvements in warning and forecast operations. Atmospheric Center graduates should meet the National Weather Service's course requirements for meteorologists which include:

1. Twenty four (24) semester hours in meteorology including six semester

hours in weather analysis and prediction of weather systems (synoptic/mesoscale); six semester hours of atmospheric dynamics and thermodynamics; three semester hours of physical meteorology; and two semester hours of remote sensing technology of the atmosphere and/or instrumentation;

2. Six semester hours of physics with at least one course that includes laboratory sessions;

3. Three semester hours of ordinary differential equations; and,

4. Nine semester hours of course work appropriate for a physical science major in any combination of three or more of the following: Physical hydrology, statistics, chemistry, physical oceanography, physical climatology, radiative transfer, aeronomy, advanced thermodynamics, advanced electricity and magnetism, light and optics, computer science. There is a prerequisite or co-requisite of calculus for course work in atmospheric dynamics and thermodynamics, physics, and differential equations. Calculus courses must be appropriate for a physical science major. The Center's proposal should address how its graduates will meet these course requirements.

Living Marine Resources Cooperative Science Center: Living Marine Resources Cooperative Science Center (LMRCSC) proposals should address the ability to support education and research in marine science including an emphasis on the following: Biological assessments; stock assessment; marine chemical assessments; habitat quality, coastal ecology—including ecosystem monitoring; remote sensing technology and GIS mapping; biodiversity; essential fish habitat; fishery economics; fishery-related social sciences and fishery biology, to include reproduction and food habitats; systematics and taxonomy; biotechnology; aquaculture; and enhancement.

LMRCSC graduates should meet the course requirements with a major studies in biology, zoology, or biological oceanography that include at least 30 semester hours in biological, marine, and aquatic science and 15 semester hours in the physical and mathematical sciences. The course work must include:

1. At least 15 semester hours in zoology beyond introductory biology or zoology in such course as invertebrate zoology, comparative anatomy, histology, physiology, embryology, advanced vertebrate zoology, genetics, entomology, and parasitology.

2. At least 6 semester hours of training applicable to fishery biology in such subjects as fishery biology, ichthyology, limnology, oceanography, algology, planktonology, marine or fresh water ecology, invertebrate ecology, principles of fishery population dynamics, or related course work in the field of fishery biology.

3. At least 15 semester hours of training in any combination of two or more of the following chemistry, physics, mathematics, or statistics.

Graduates must be able to carry out a variety of tasks including: predicting population trends of living marine resources (LMR); developing harvest strategies that maintain sustainable yields of renewable resources; analyzing the social and economic impacts of various management decisions on communities by decisions related to LMR. In addition, graduates must be able to design and carry out projects for LMR.

Environmental Cooperative Science Center: Environmental Cooperative Science Center (ECSC) proposals should address the ability to respond to coastal and ocean threats, restore damaged areas, manage coastal and ocean resources and support maritime commerce. Key areas of focus could include:

1. Understanding, predicting, assessing, managing, and communicating the impacts of human and natural stresses on coastal ocean ecosystems, including impacts from climate change, pollution, land and resource use, invasive species, and extreme natural events;

2. Developing science-based support and guidance for integrated coastal and ocean management, including full integration of biophysical sciences, ecology, and human dimensions; and,

3. Increased understanding of the physical, chemical, and biological processes that both impact and support coastal navigation and ports, as well as an integration of this biophysical understanding with human dimensions to increase navigation safety and decrease potential negative impacts to ecosystems and coastal resources.

ECSC graduates should have at least 24 semester hours that include coursework in each of the areas of physical, chemical, biological, and ecological sciences. Supporting coursework in engineering (civil, marine, electrical, chemical, environmental, mechanical, ocean, as applicable to Center focus areas) would be an asset. Knowledge of pertinent research and analytical methodology, as well as the ability to apply the aforementioned sciences and disciplines to policy and management issues, is required.

Remote Sensing Technology Cooperative Science Center: Remote Sensing Technology Cooperative Science Center must have particular emphasis in environmental satellite-related research activities directed toward helping to sustain healthy coasts, to build sustainable fisheries, to recover protected species, to help improve weather forecasts and warnings, to provide improved environmental forecasts or analyses, and to prepare for future NOAA operational environmental satellite missions. The Center will be expected to:

1. Provide an organizational setting to promote and establish programs and related research relating to remote sensing technology by drawing upon multiple disciplines and involving collaboration with multiple performing and research-sponsoring partners;

2. Serve as a model for outreach, input, and collaboration that help ensure that research can be applied to solving priority NOAA remote sensing technology, current satellite system optimization, and future satellite system development and planning;

3. Expand research in remote sensing technology, satellite data management, and user access technologies; and,

4. Support multi-disciplinary research projects aimed at NOAA's remote sensing technology mission responsibilities, to include: (a) Passive radiometric remote sensing technology; (b) Passive multi-spectral remote sensing technology; (c) High spectral resolution (hyperspectral) remote sensing technology; (d) Active and passive microwave remote sensing technology; (e) Satellite sensor development and demonstration in the categories above; (f) technologies relating to satellite data acquisition, data distribution, mission operations, and mission planning; and, g) Technologies relating to improved user data access and data management. Through such multi-disciplinary research, explore new approaches to enhance the use of present and future environmental satellites to meet the rapidly changing environmental needs of the Nation.

The Cooperative Science Centers's principal academic institution must be an accredited MSI with a Ph.D. program in one of the NOAA core science areas in atmospheric, oceanic and environmental sciences, living marine resources science and management, and remote sensing technology. A Cooperative Science Center Distinguished Scientist position must be created—within one year— to develop significant research projects for their respective Center and other EPP Centers, MSIs, NOAA science and

research facilities and relevant agencies. Faculty and staff exchanges are an integral part of this program and opportunities for faculty and staff exchanges are available for collaborative research or other agreed upon activities. A postdoctoral program supported by NOAA EPP funds must be established at each of the Science Centers. During the two-year fellowship the postdoctoral research should be collaborative between the postdoctoral fellow and NOAA scientist and address a NOAA core science area. The candidates do not become NOAA employees. NOAA expects the Center to develop mechanisms and approaches that increase Center student course and seminar offerings not only at the Center MSI but at other MSIs and partner institutions. A K–12 science education program must be established at each of the Science Centers. The K–12 science education program purpose is increasing the basic science and math skilled student pipeline. A thirty percent (30%) award minimum is required for student support, that includes—but is not limited to—scholarships, fellowships, travel expenses to professional meetings and for conducting site research. While the Centers are established at MSIs, non-minority serving institutions consortia are not restricted. Also, private and public sector partnerships are encouraged.

Electronic Access

Applicants can access download and submit electronic grant applications, including the Full Funding Opportunity Announcement, for NOAA programs at the Grants.gov Web site: *http://www.grants.gov.* The announcement will also be available at the NOAA EPP Web site *http://epp.noaa.gov* or by contacting the program officials identified above. The closing date will be the same as for the paper submissions noted in this announcement. NOAA strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. If Internet access is unavailable, hard copies of proposals will also be accepted-a signed original and two copies at time of submission. This includes color or high-resolution graphics, unusually sized materials, or otherwise unusual materials submitted as part of the proposal. For color graphics, submit either color originals or color copies. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Funding Availability

Subject to Congressional appropriations, this solicitation announces that funding at a maximum of $50 million will be available for the Cooperative Science Centers over a five-year period. Proposals are limited to a total of $12.5 million for a maximum of five years and four proposals will be funded. The funding instrument will be a cooperative agreement since NOAA will be substantially involved in developing research priorities, conducting cooperative activities with recipients, exchanging staff and providing internship opportunities for students at MSIs.

Authority: 15 U.S.C. 1540, 49 U.S.C. 44720, 33 U.S.C. 883d, 33 U.S.C. 1442, 16 U.S.C. 1854(e), 16 U.S.C. 661, 16 U.S.C. 753(a), 16 U.S.C. 1451 *et seq.*, 16 U.S.C. 1431, 33 U.S.C. 883a and Executive Orders 13230, 13256, 13270, 13336, and 13339.

Catalog of Federal Domestic Assistance: 11.481—Educational Partnership Program with Minority Serving Institutions.

Eligibility: For the purposes of this program, Historically Black Colleges and Universities, Hispanic Serving Institutions, Tribal Colleges and Universities, and Alaska Native and Native Hawaiian Serving Institutions, as identified on the 2004 United States Department of Education, Accredited Postsecondary Minority Institution list at *http://epp.noaa.gov,* are eligible to apply. Proposals will not be accepted from non-profit organizations, foundations, auxiliary services or any other entity submitted on behalf of MSIs.

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Evaluation and Selection Criteria and Procedures: NOAA published its agency-wide solicitation entitled ''Omnibus Notice Announcing the Availability of Grant Funds for Fiscal Year 2006'' for projects for Fiscal Year 2006 in the **Federal Register** on June 30, 2005 (70 FR 37766). The evaluation and selection criteria and procedures for projects contained in that omnibus notice are applicable to this notice. Copies of this notice are available on the Internet at *http://www.ofa.noaa.gov/%7Eamd/SOLINDEX.HTML.* Further details on evaluation and selection criteria and procedures applicable to this notice can be found in the full funding opportunity announcement.

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/,* including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf,* and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm.* Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.*, the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application. In some cases if additional information is required after application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

Limitation of Liability

Funding for the Cooperative Science Centers listed in this notice is

contingent upon availability of Fiscal Year 2006 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for the Cooperative Science Centers. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds. Recipients and sub-recipients are subject to all Federal laws and agency policies, regulations and procedures applicable to Federal financial assistance awards.

Paperwork Reduction Act

This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF–LLL and CD–346 has been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046 and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

It has been determined that this notice is not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comments are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared, and none has been prepared.

Mark Brown,

Chief Financial Officer, NOAA Oceanic and Atmospheric Research.

[FR Doc. E5–7395 Filed 12–14–05; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030602141–5301–30]

Request for Proposals for Fiscal Year 2006–NOAA Educational Partnership Program With Minority Serving Institutions: Environmental Entrepreneurship Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce (DOC).

ACTION: Notice of availability of funds.

SUMMARY: NOAA's Environmental Entrepreneurship Program is soliciting proposals that support environmental revitalization projects. Projects should engage students at MSIs in hands-on training and experiential learning opportunities in the application of NOAA science and business acumen.

The program's objective is to increase the number of students proficient in environmental business enterprises. For the purposes of this program, Environmental Business Enterprises is defined as applying skills and techniques in the development and operations of businesses that resolve environmental degradation in local communities.

The process involves engaging students in the application of business skills and best management science techniques that will enable students to gain practical experience in resolving environmental degradation in their local communities. Students are expected to learn how to transform business concepts into innovative products or services that support environmental business enterprises. This is achieved through community-based collaborative processes.

It is expected that three cooperative agreement awards will be funded in fiscal year 2006. Eligible MSIs may apply for a maximum of $200,000, on a competitive basis, to support environmental revitalization projects, for a two or three-year period. The total funding available is $600,000, subject to Congressional appropriations.

The program's vision is an increased number of students at MSIs proficient in environmental business enterprises that advance DOC/NOAA's mission. Successful programs will build the institution's capacity to train students in developing and operating businesses in local communities where there is a need to sustain or revitalize naturally depleted environments.

DATES: Full Proposals must be received by 2 p.m. (eastern standard time) February 13, 2006. Facsimile transmissions and electronic mail submission of proposals will not be accepted.

ADDRESSES: Applicants are strongly encouraged to submit applications through the Grants.gov Web site. Electronic access to the full funding opportunity announcement for this program is available via the Grants.gov Web site: *http://www.grants.gov*. The announcement will also be available at the NOAA Web site *http://www.ofa.noaa.gov/%7Eamd/solindex.html* or by contacting the program official identified below. Applicants must comply with all requirements contained in the full funding opportunity announcement.

If Internet access is unavailable, paper applications (a signed original and two copies) should be submitted by postal mail, commercial delivery service, or hand-delivery to the Educational Partnership Program at the following address: NOAA/EPP, 1315 East-West Highway, SSMC III, Room 10600, Silver Spring, Maryland 20910. Facsimile and electronic mail submission of applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Jacqueline Rousseau, Program Director at (301) 713–9437 extension 124 or *Jacqueline.J.Rousseau@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Summary Description

NOAA's Environmental Entrepreneurship Program supports projects aimed at increasing opportunities for students at MSIs to become proficient in environmental business enterprises.

According to the U.S. DOC Census Bureau, 2002 Economic Statistics Report, under represented groups comprise only fourteen percent of the total U.S. businesses. These include:

- 5% of the U.S. businesses are owned by Blacks;
- 6.85% of the U.S. businesses are owned by Hispanic or Latinos;
- 0.89% (less than one percent) of U.S. businesses are owned by American Indian and Alaska Natives and;
- (0.14%) (less than one percent) of U.S. businesses are owned by Native Hawaiian and Pacific Islanders.

The EEP advances the U.S. Department of Commerce mission ''to create the conditions for economic growth and opportunity by promoting innovation, entrepreneurship, competitiveness and stewardship''. In addition, the EEP supports NOAA's efforts to foster environmental literacy.

Minority Serving Institutions are expected to design Environmental Revitalization Projects that train students in becoming proficient in environmental business enterprises. The projects must engage students in resolving environmental degradation in local communities where there is a need to sustain or revitalize naturally depleted environments.

The projects must be undertaken through community-based collaborative efforts among MSIs, NOAA, and the private sector. Business incubators serve as a learning environment for training aspiring entrepreneurs; therefore, MSIs that collaborate with business incubators are highly encouraged.

MSIs are also encouraged to pursue collaboration with campus or local community-based minority business development centers, small business development centers, and community and economic development organizations. Strong linkages or collaborations with NOAA programs, laboratories and facilities and the private sector are required. Innovative approaches to training students are sought that take maximum advantage of synergies and partnerships with Business Incubators, Minority Business Development Centers, Small Business Development Centers and Community and Economic Development organizations.

MSIs, and their partners, must train a minimum of ten students each year of the project in a combination of science and business skills under this program.

Partnerships should enable students to become proficient in businesses that resolve environmental degradation in support of NOAA's science mission areas. These include assisting students to become proficient in businesses that would:

(1) Protect, restore, and manage coastal and ocean resources through ecosystem management;

(2) Increase the number and use of climate information, products and services that would enable local communities to plan and respond to climate variability and change;

(3) Improve weather and water information, products and services to improve the understanding, observation, forecasting and warning of environmental events; and

(4) Support the nation's commerce with information, products and services for safe, efficient, and environmentally sound transportation.

MSIs should ensure students obtain the necessary knowledge, skills, tools and technology training that are applied outside the classroom. The projects should allow students to gain practical, real-world experiences to understand the nature and extent of environmental degradation within local communities. Students should be trained in testing and monitoring methods to prevent, control, and reduce the degradation of natural environments.

The intention is for students to apply skills and techniques, business concepts, and products and services for the expansion of commerce and economic development.

At the end of the project, participating students will be proficient in environmental business enterprises. Students and faculty will contribute to promoting environmental sustainability and revitalizing local communities in support of NOAA's science mission areas.

Electronic Access

Applicants can access, download, and submit electronic grant applications, including the full funding opportunity announcement, for NOAA programs at the Grants.gov Web site: *http://www.grants.gov*. The announcement will also be available at the NOAA Web site *http://www.ofa.noaa.gov/%7Eamd/SOLINDEX.HTML* or by contacting the program official identified above. The closing date will be the same as for the paper submissions noted in this announcement. NOAA strongly recommends that applicants not wait until the application deadline date to begin the application process through Grants.gov.

If Internet access is unavailable, a signed original and two paper copies of proposals will also be accepted by the submission deadline. This includes color or high-resolution graphics, unusually sized materials, or otherwise unusual materials submitted as part of the proposal. For color graphics, submit either color originals or color copies. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Funding Availability

This solicitation announces that funding up to $600,000 will be available in FY 2006, with a maximum of $200,000 per award for a two (2) or three (3) year period, subject to Congressional appropriations.

Applications for awards in access of $200,000 will not be considered. It is anticipated that the funding instrument will be a cooperative agreement since NOAA will be substantially involved in collaborative student training and experiential learning activities.

Authority: 15 U.S.C. 1540.

Catalog of Federal Domestic Assistance: 11.481—Educational Partnership Program with Minority Serving Institutions.

Eligibility

Minority Serving Institutions eligible to submit proposals include institutions of higher education identified by the Department of Education as:

(1) Historically Black Colleges and Universities,

(2) Hispanic-Serving Institutions,

(3) Tribal Colleges and Universities,

(4) Alaska Native or Native Hawaiian Serving Institutions.

on the most recent ''United States Department of Education Accredited Postsecondary Minority Institutions'' list (at the date of publication of this notice). The most recent list can be found on the NOAA EPP Web site at: *http://epp.noaa.gov/*.

Proposals submitted by non-profit organizations, foundations, auxiliary services or any other entity on behalf of MSIs will not be accepted.

Cost Sharing Requirements

Matching requirements include 10 percent match of the total grant project in direct student support. Matching funds must be from non-Federal sources (in the private sector) and may include in-kind contributions in support of students working and using equipment for the purposes of training. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the review process.

The Director of NOAA's Office of Education may waive all or part of the matching requirement if the Director determines that the project meets the following two requirements: (1) No reasonable means are available through which an applicant can meet the matching requirement; and (2) The probable benefit of such project outweighs the public interest in such matching requirement. In the case of a waiver request, the applicant must provide a detailed justification explaining the need for the waiver. The program shall waive any requirement for local matching funds to the governments of Insular Areas, defined as the jurisdictions of the U.S. Virgin Islands, Guam, American Samoa, and

the Commonwealth of the Northern Mariana Islands.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Evaluation and Selection Criteria and Procedures

NOAA published its agency-wide solicitation entitled ''Omnibus Notice Announcing the Availability of Grant Funds for Fiscal Year 2006'' for projects for Fiscal Year 2006 in the **Federal Register** on June 30, 2005 (70 FR 37766). The evaluation and selection criteria and procedures for projects contained in that omnibus notice are applicable to this notice. Copies of this notice are available on the Internet at *http://www.ofa.noaa.gov/%7Eamd/SOLINDEX.HTML.* Further details on evaluation and selection criteria and procedures applicable to this notice can be found in the full funding opportunity announcement.

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/,* including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf,* and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm.* Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds. Recipients and sub-recipients are subject to all Federal laws and agency policies, regulations and procedures applicable to Federal financial assistance awards.

Paperwork Reduction Act

This notification involves collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF–LLL and CD–346 has been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046 and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

It has been determined that this notice is not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comments are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared, and none has been prepared.

Mark Brown,

Chief Financial Officer, NOAA, Oceanic and Atmospheric Research.

[FR Doc. E5–7397 Filed 12–14–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 030602141–5302–31]

Financial Assistance To Administer NOAA's Educational Partnership Program (EPP) With Minority Serving Institutions (MSI), Graduate Sciences Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of criteria to administer the EPP/MSI Graduate Sciences Program; and notice of availability of funds and solicitation for proposals for these funds.

SUMMARY: The purpose of this document is to advise the public that NOAA's Educational Partnership Program is soliciting not-for-profit organizations to administer its EPP Graduate Sciences Program. The goal of the Graduate Sciences Program is to provide college graduates who have received at least a Bachelor's degree in mathematics, science, economics, law, and engineering, entry-level employment and hands-on research and work experience at NOAA. The program's objective is to increase the number of students who undertake course work and graduate with degrees in the targeted areas integral to NOAA's mission.

The goal of the NOAA EPP/MSI Graduate Sciences Program (GSP) is aimed primarily at increasing opportunities and available programs for students in NOAA related fields to pursue research and graduate level

educational training in atmospheric, environmental, and oceanic sciences at Minority Serving Institutions (MSI) when possible. All students are competitively selected for positions in NOAA offices and facilities.

Participants must be U.S. citizens, have a Bachelor's degree in mathematics, science, law, or engineering, and have, and maintain, a minimum G.P.A. of 3.0 or higher prior to and for the duration of their training. Prior to acceptance into the program, students must be enrolled in an accredited graduate school and obtain a letter of recommendation by a school official. This two-year program provides for formal periods of work, study, and structured classroom training programs in meteorology, hydrology, cartography, oceanography, ecology, remote sensing technology, environmental science and planning, marine science, fisheries biology, computer science, and environmental law. GSP pays for tuition, books, lab fees, campus housing allowance, travel expenses, and salary during 16 weeks of NOAA work experience per year at a NOAA research facility. NOAA scientists are assigned as mentors to graduate scientists during the training period.

The progress of the students is monitored throughout the academic year and during the intermittent career work experiences. Under the program, graduate students are required to present their research at conferences, scientific meetings and workshops, education and science forums, etc. The program requires that students participate in an orientation program at NOAA Headquarters in Silver Spring, Maryland, at the beginning of their appointment.

DATES: Applications must be received by NOAA Educational Partnership Program (EPP) no later than 2 p.m. (eastern standard time), February 13, 2006.

ADDRESSES: Applications submitted in response to this announcement are strongly encouraged to submit through the Grants.gov Web site. Electronic access to the full funding opportunity announcement for this program is available via the Grants.gov Web site: *http://www.grants.gov.* The announcement will also be available at the NOAA EPP Web site *http://epp.noaa.gov* or by contacting the program official identified below. Applicants must comply with all requirements contained in the full funding opportunity announcement. Paper applications (a signed original and two copies) may also be submitted to the Educational Partnership Program at the following address: NOAA/EPP, 1315 East West Highway, Room 10703, Silver Spring, Maryland 20910. No facsimile applications will be accepted. Institutions are encouraged to submit Letters of Intent to NOAA/EPP within 30 days of this announcement to aid in planning the review processes.

Letters of Intent may be submitted via e-mail to *Chantell.Haskins@noaa.gov.* Information should include a general description of the program administration proposal.

FOR FURTHER INFORMATION CONTACT: Chantell Haskins, Program Manager at (301) 713–9437 ext. 125 or *Chantell.Haskins@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

NOAA is committed to recruiting and retaining individuals from underrepresented communities as part of its workforce. The agency established EPP to provide financial assistance to train students in NOAA-related sciences and to conduct hands-on research related to the ongoing mission of the agency. Therefore, the agency established a program aimed at partnering with MSIs that train and graduate students in the areas of atmospheric, oceanic and environmental sciences, fisheries sciences, and management, and remote sensing technology. Since approximately 40% of minority students receive their undergraduate degrees at MSIs, direct collaboration with MSIs is an effective way to increase the number of students from under-represented communities trained and graduated in NOAA-related sciences.

With such a limited pool of potential minority employees trained in NOAA-related sciences, it is important that NOAA seek new ways to make students aware of the mission of the agency and to support activities that increase opportunities for students trained in NOAA-related sciences.

The National Oceanic and Atmospheric Administration (NOAA) Educational Partnership Program (EPP) with Minority Serving Institutions (MSIs) is a competitive program designed to develop and/or enhance the collaboration between NOAA and the MSI community to increase the number of students who pursue coursework and graduate with degrees in NOAA-related sciences. The program is designed to improve NOAA's outreach and recruitment efforts of under-represented individuals in the scientific mission-related occupational fields, *i.e.*, fishery biology, environmental law, meteorology, cartography, oceanography, hydrology, computer science, ecology, environmental economics, and engineering. The program requires graduate student's participation in research projects that will promote in-depth knowledge and understanding of NOAA sciences in their academic institutions. For the purposes of this announcement, MSIs are defined as Historically Black Colleges and Universities, Hispanic Serving Institutions, Tribal Colleges and Universities, Alaska Native and Native Hawaiian Serving Institutions as defined by the Department of Education and the most recent list can be found on the NOAA EPP Web site at *http://epp.noaa.gov.*

Electronic Access

Applicants can access, download, and submit electronic grant applications, including the full funding opportunity announcement, for NOAA programs at the Grants.gov Web site: *http://www.grants.gov.* The announcement will also be available at the NOAA EPP Web site *http://epp.noaa.gov* or by contacting the program official identified above. The closing date will be the same as for paper submissions noted in this announcement. NOAA strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. If Internet access is unavailable, hard copies of proposals will also be accepted—a signed original and two copies—at time of submission. The project description (including relevant results from prior training programs) should not exceed 15 pages. Page limits are inclusive of figures, and other visual materials, but are exclusive of references, milestone charts, letters of collaboration from unfounded collaborators, letters of endorsement, and curriculum vitae which may not exceed 2 pages for each principal, program administrator/coordinator. This includes color or high-resolution graphics, unusually sized materials, or otherwise unusual materials submitted as part of the proposal. For color graphics, submit either color originals or color copies. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Funding Availability

Subject to appropriations, this solicitation announces that funding at a maximum of $350,000 will be available for program administration of the Graduate Sciences Program over a two-year period. The proposal is limited to a total of $350,000 for a maximum of two years and one proposal will be funded. Up to 18% of $350,000 is

allowed for administrative overhead and at least 82% of $350,000 is for student support. It is anticipated that the funding instrument will be a cooperative agreement since NOAA will be substantially involved in identifying NOAA facilities to place students during the two summer internships, and with collaboration, participation, or intervention in project performance.

Authorities: 15 U.S.C. 1540, 49 U.S.C. 44720, 33 U.S.C. 883d, 33 U.S.C. 1442, 16 U.S.C. 1854(e), 16 U.S.C. 661, 16 U.S.C. 753(a), 16 U.S.C. 1451 *et seq.*, 16 U.S.C. 1431, 33 U.S.C. 883a and Executive Orders 12876, 12900, 13021, 13336, and 13339.

Catalog of Federal Domestic Assistance: 11.481—Educational Partnership Program with Minority Serving Institutions.

Eligibility: Proposals will only be accepted from non-profit organizations.

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Evaluation and Selection Procedures: Once an application is received by NOAA, an initial administrative review is conducted to determine compliance with requirements and completeness of the application. The initial administrative review will be based on:

1. Eligibility—Proposals will only be accepted and reviewed from not-for-profit organizations (as defined in Section IIIA of the full funding opportunity announcement);
2. Submission date—Proposals will only be accepted and reviewed if they are received in the NOAA EPP office by the designated deadline;
3. Project cost—Proposals will only be accepted and reviewed if the administrative overhead costs are no more than 18% of the total award.

Each application that meets the requirements and is complete will be evaluated and scored individually in accordance with the assigned weights of the evaluation criteria by an independent peer review panel. Each peer panel reviewer will score proposals on a scale of five to one, where scores represent respectively: Excellent (5), Very Good (4), Good (3), Fair (2), Poor (1).

Each peer review panel will be comprised of 3 to 5 individuals, having expertise in the program management of student fellowship, scholarship, or internship programs in the areas of science and technology. The individual peer review panelist scores shall be averaged for each application and presented to the Program Officer. No consensus advice will be given by the independent peer to the review panel. The Program Officer will neither vote nor score proposals as part of the independent peer review panel nor participate in discussion of the merits of the proposal. Those proposals receiving an average panel score of ''Good,'' ''Fair,'' or ''Poor'' will not be given further consideration, and applicants will be notified of non-selection. For the proposals rated by the panel as either ''Excellent'' or ''Very Good,'' the Program Officer will (a) rank the proposals by average panel ratings, and/or by applying the project selection factors listed below; (b) determine the total duration of funding for the selected proposal; and (c) determine the amount of funds available for the selected proposal subject to the availability of fiscal year funds. A recommendation for funding is then forwarded to the selecting official, the Director, NOAA Office of Education, for the final funding decision. In making the final selection, the Director will award to the highest scoring applicant unless the selected proposal is justified to be selected out of rank order based on the selection factors listed below. Investigators may be asked to modify objectives, work plans or budgets, and provide supplemental information required by the agency prior to the award. When a decision has been made (whether an award or declination), verbatim anonymous copies of reviews and summaries of review panel deliberations, if any, will be made available to the applicant upon applicant request. Declined applications will be held in the NOAA EPP for the required 3 years in accordance with the current retention requirements, and then destroyed.

Evaluation Criteria: Proposals will be evaluated on the basis of the following evaluation criteria at the indicated weights:

(1) Importance and/or relevance and applicability of proposed project to the program goals. This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, state, or local activities.

(2) Technical/scientific merit: This assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives.

(3) Overall qualifications of applicants: This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.

(4) Project costs: The Budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame.

(5) Outreach and education: NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

Selection Factors: The merit review ratings shall provide a rank order to the Selecting Official for final funding recommendation. A program officer may first make a recommendation to the Selecting Official applying the selection factors below. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon numbers 1, 4, 5 and 6 of the following factors:

1. Availability of funding.
2. Balance/distribution of funds:

a. Geographically
b. By type of institutions
c. By type of partners
d. By research areas
e. By project types

3. Whether this project duplicates other projects funded or considered for funding by NOAA or other federal agencies.
4. Program priorities and policy factors set forth in sections I.A. and B. and IV.B. of the Full Funding Opportunity.
5. Applicant's prior award performance.
6. Partnerships and/or Participation of targeted groups.
7. Adequacy of information necessary for NOAA to make a NEPA determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to

be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.*, the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application. In some cases if additional information is required after application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

Limitation of Liability

Funding for the program administration listed in this notice is contingent upon availability of Fiscal Year 2006 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for the Graduate Sciences Program. In no event will NOAA or the Department of Commerce accept responsibility for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds. Recipients and sub-recipients are subject to all Federal laws and agency policies, regulations and procedures applicable to Federal financial assistance awards.

Paperwork Reduction Act

This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF–LLL and CD–346 has been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046 and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

It has been determined that this notice is not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comments are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared, and none has been prepared. It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Mark Brown,

Chief Financial Officer, NOAA Oceanic and Atmospheric Research.

[FR Doc. E5–7396 Filed 12–14–05; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 030602141–5300–29]

Financial Assistance To Administer NOAA's Educational Partnership Program (EPP) With Minority Serving Institutions (MSI), Undergraduate Scholarship Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of criteria to administer the EPP/MSI Undergraduate Scholarship Program; and notice of availability of funds and solicitation for proposals for these funds.

SUMMARY: The purpose of this document is to advise the public that NOAA's Educational Partnership Program is soliciting not-for-profit organizations to administer its Undergraduate Scholarship Program. The goal of the Undergraduate Scholarship Program is to increase the number of students who undertake course work and graduate with degrees in the targeted areas integral to NOAA's mission. This program targets students who have completed their sophomore year; attend Minority Serving Institutions; majoring in mathematics, science, or engineering; and have recently declared, or about to declare a major in atmospheric, oceanic, remote sensing technology, or environmental science disciplines.

The Undergraduate Scholarship participants must be U.S. citizens and attend an MSI including Hispanic Serving Institutions, Historically Black Colleges and Universities, Tribal College and Universities, Alaska-Native Serving Institutions, and Native Hawaiian Serving Institutions full-time, be pursuing studies in atmospheric science, biology, cartography, chemistry, computer science, engineering, environmental science, geodesy, geography, marine science, mathematics, meteorology, physical science, oceanography, marine biology, photogrammetry, or physics. Participants must have, and maintain, a minimum 3.0 grade point average.

DATES: Applications must be received by NOAA Educational Partnership Program (EPP) no later than 2 p.m. (*eastern standard time*), February 13, 2006.

ADDRESSES: Applications submitted in response to this announcement should be submitted through the Grants.gov Web site. Electronic access to the full funding opportunity announcement for this program is available via the Grants.gov Web site: *http://www.grants.gov.* The announcement will also be available at the NOAA EPP Web site *http://epp.noaa.gov* or by contacting the program official identified below. Applicants must comply with all requirements contained in the full funding opportunity announcement. Paper applications (a signed original and two copies) may also be submitted to the Educational Partnership Program at the following address: NOAA/EPP, 1315 East West Highway, Room 10703, Silver Spring, Maryland 20910. No facsimile applications will be accepted.

Institutions are encouraged to submit Letters of Intent to NOAA/EPP within 30 days of this announcement to aid in planning the review processes.

Letters of Intent may be submitted via e-mail to *Chantell.Haskins@noaa.gov.* Information should include a general description of the program administration proposal.

FOR FURTHER INFORMATION CONTACT: Chantell Haskins, Program Manager at (301) 713–9437 ext. 125 or *Chantell.Haskins@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

NOAA is committed to training students in NOAA related sciences to increase the number of trained and graduating students. Therefore, the agency established a program aimed at partnering with MSIs that train and graduate students in the areas of atmospheric, oceanic and environmental sciences, fisheries sciences, and management, and remote sensing. Since approximately 40% of minority students receive their undergraduate degrees at MSIs, direct collaboration with MSIs is an effective way to increase the number of students from underrepresented communities who are trained and graduated in NOAA-related sciences.

With such a limited pool of potential employees from underrepresented communities trained in NOAA-related sciences, it is important that NOAA seek new ways to make students aware of the mission of the agency and to support activities that increase opportunities for students trained in NOAA-related sciences.

The National Oceanic and Atmospheric Administration (NOAA) Educational Partnership Program (EPP) with Minority Serving Institutions (MSIs) is a competitive program designed to develop and/or enhance the collaboration between NOAA and the MSI community to increase the number of students who pursue coursework and graduate with degrees in NOAA-related sciences. The program encourages undergraduate student's participation in research projects that will facilitate familiarity with NOAA sciences in their academic institutions. For the purposes of this announcement, MSIs are defined as Historically Black Colleges and Universities, Hispanic Serving Institutions, Tribal Colleges and Universities, Alaska Native and Native Hawaiian Serving Institutions as defined by the Department of Education and the most recent list can be found on the NOAA EPP Web site at *http://epp.nooaa.gov.*

The goal of the NOAA EPP/MSI Undergraduate Scholarship Program is to increase the number of students who undertake course work and graduate with degrees in the targeted areas integral to NOAA's mission. This program targets students, attending Minority Serving Institutions, who have completed their sophomore year, and have declared, or about to declare a major in atmospheric, oceanic, or environmental science disciplines (i.e., atmospheric science, biology, cartography, chemistry, computer science, engineering, environmental science, geodesy, geography, marine science, mathematics, meteorology, photogrammetry, physical science, physics and remote sensing). Competitive appointments will be made to students attending MSIs at approved NOAA offices and facilities. This program provides travel to students to approved NOAA offices and facilities; have students participate in current research and development activities; and provides financial assistance for tuition and fee costs to students for two academic years and two summers. Progress of the students is monitored throughout the academic years and during the summer internships. The program requires that the first summer internship be spent at a NOAA facility in the Washington, DC metropolitan area. The program requires that each student attend a roundtable discussion and give oral presentations on their research at NOAA Headquarters in Silver Spring, Maryland, at the conclusion of summer internships. The program requires that each second year student travel during their winter semester break to an approved NOAA site to make arrangements for the second summer internship.

Electronic Access: Applicants can access download and submit electronic grant applications, including the full funding opportunity announcement, for NOAA programs at the Grants.gov Web site: *http://www.grants.gov.* The announcement will also be available at the NOAA EPP Web site *http://epp.noaa.gov* or by contacting the program official identified above. The closing date will be the same as for the paper submissions noted in this announcement. NOAA strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. If Internet access is unavailable, hard copies of proposals will also be accepted-a signed original and two copies at time of submission. The project description (including relevant results from prior training programs) should not exceed 15 pages. Page limits are inclusive of figures, and other visual materials, but are exclusive of references, milestone charts, letters of collaboration from unfounded collaborators, letters of endorsement, and curriculum vitae which may not exceed 2 pages for each principal, program administrator/coordinator. This includes color or high-resolution graphics, unusually sized materials, or otherwise unusual materials submitted as part of the proposal. For color graphics, submit either color originals or color copies. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Funding Availability: Subject to appropriations, this solicitation announces that funding at a maximum of $500,000 will be available for program administration of the Undergraduate Scholarship Program over a two-year period. The proposal is limited to a total of $500,000 for a maximum of two years and one proposal will be funded. Up to 18% of $500,000 is allowed for administrative overhead and at least 82% of $500,000 is for student support. It is anticipated that the funding instrument will be a cooperative agreement since NOAA will be substantially involved in identifying NOAA facilities to place students during the two summer internships, and with collaboration, participation, or intervention in project performance.

Authorities: 15 U.S.C. 1540; 49 U.S.C. 44720; 33 U.S.C. 883d; 33 U.S.C. 1442; 16 U.S.C. 1854(e); 16 U.S.C. 661; 16 U.S.C. 753(a); 16 U.S.C. 1451 *et seq.*; 16 U.S.C. 1431; 33 U.S.C. 883a and Executive Orders 12876, 12900, 13021, 13336, and 13339.

Catalog of Federal Domestic Assistance: 11.481—Educational Partnership Program with Minority Serving Institutions.

Eligibility: Proposals will only be accepted from non-profit organizations.

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Evaluation and Selection Procedures: Once an application is received by NOAA, an initial administrative review is conducted to determine compliance with requirements and completeness of the application. The initial administrative review will be based on:

1. Eligibility—Proposals will only be accepted and reviewed from not-for-profit organizations (as defined in Section IIIA of the full funding opportunity announcement:

2. Submission date—Proposals will only be accepted and reviewed if they are received in the NOAA EPP office by the designated deadline;

3. Project cost—Proposals will only be accepted and reviewed if the administrative overhead costs are no more than 18% of the total award.

Each application that meet the requirements and is complete will be evaluated and scored individually in accordance with the assigned weights of the evaluation criteria by an independent peer review panel. Each peer panel reviewer will score proposals on a scale of five to one, where scores represent respectively: Excellent (5), Very Good (4), Good (3), Fair (2), Poor (1). Each peer review panel will be comprised of 3 to 5 individuals, having expertise in the program management of student fellowship, scholarship, or internship programs in the areas of science and technology. The individual peer review panelist scores shall be averaged for each application and presented to the Program Officer. No consensus advice will be given by the independent peer to the review panel. The Program Officer will neither vote nor score proposals as part of the independent peer review panel nor participate in discussion of the merits of the proposal. Those proposals receiving an average panel score of ''Good,'' ''Fair,'' or ''Poor'' will not be given further consideration, and applicants will be notified of non-selection. For the proposals rated by the panel as either ''Excellent'' or ''Very Good, the Program Officer will (a) rank the proposals by average panel ratings, and/or by applying the project selection factors listed below; (b) determine the total duration of funding for the selected proposal; and (c) determine the amount of funds available for the selected proposal subject to the availability of fiscal year funds. A recommendation for funding is then forwarded to the selecting official, the Director, NOAA Office of Education, for the final funding decision. In making the final selection, the Director will award to the highest scoring applicant unless the selected proposal is justified to be selected out of rank order based on the selection factors listed below. Investigator may be asked to modify objectives, work plans or budgets, and provide supplemental information required by the agency prior to the award. When a decision has been made (whether an award or declination), verbatim anonymous copies of reviews and summaries of review panel deliberations, if any, will be made available to the applicant upon applicant request. Declined applications will be held in the NOAA EPP for the required 3 years in accordance with the current retention requirements, and then destroyed.

Evaluation Criteria: Proposals will be evaluated on the basis of the following evaluation criteria at the indicated weights: (1) Importance and/or relevance and applicability of proposed project to the program goals. This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, State, or local activities.

(2) Technical/scientific merit: This assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives.

(3) Overall qualifications of applicants: This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project

(4) Project costs: The Budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame.

(5) Outreach and education: NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

Selection Factors: The merit review ratings shall provide a rank order to the Selecting Official for final funding recommendation. A program officer may first make a recommendation to the Selecting Official applying the selection factors below. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon numbers 1, 4, 5 and 6 of the following factors:

1. Availability of funding.

2. Balance/distribution of funds:

a. Geographically
b. By type of institutions
c. By type of partners
d. By research areas
e. By project types

3. Whether this project duplicates other projects funded or considered for funding by NOAA or other Federal agencies.

4. Program priorities and policy factors set forth in sections I.A. and B. and IV.B. of the Full Funding Opportunity.

5. Applicant's prior award performance.

6. Partnerships and/or Participation of targeted groups.

7. Adequacy of information necessary for NOAA to make a NEPA determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, ''Implementing the National Environmental Policy Act'', March 10,1983 is: *<http://www.osec.doc.gov/bmi/daos/216-6.htm>http://www.osec.doc.gov/bmi/daos/216-6.htm*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm.*

Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application. In some cases if additional information is required after application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for

Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

Limitation of Liability

Funding for the program administration listed in this notice is contingent upon availability of Fiscal Year 2006 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for the Undergraduate Scholarship Program. In no event will NOAA or the Department of Commerce accept responsibility for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds. Recipients and sub-recipients are subject to all Federal laws and agency policies, regulations and procedures applicable to Federal financial assistance awards.

Paperwork Reduction Act

This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF–LLL and CD–346 has been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046 and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

It has been determined that this notice is not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comments are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared, and none has been prepared.

It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Mark Brown,

Chief Financial Officer, NOAA Oceanic and Atmospheric Research.

[FR Doc. E5–7398 Filed 12–14–05; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121205A]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of Law Enforcement Advisory Panel (LEAP) meeting via conference call.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will reconvene its Law Enforcement Advisory Panel (LEAP) via Conference Call to approve the 2006 Operations Plan to the 2005-2010 Strategic Plan that outlines joint goals and objectives for state and federal marine resource enforcement activities. The call was originally scheduled for December 5, 2005 and had to be rescheduled.

DATES: The Conference Call will be held on Tuesday, January 3, 2006.

ADDRESSES: The meeting will be held via conference call and listening stations will be available. For specific locations see **SUPPLEMENTARY INFORMATION.**

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Deputy Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene its Law Enforcement Advisory Panel (LEAP) by conference call on Monday, January 3, 2006 at 4 p.m. e.s.t. This call was originally scheduled for December 5, 2005. The purpose of the meeting is to approve the 2006 Operations Plan to the 2005-2010 Strategic Plan that outlines joint goals and objectives for state and federal marine resource enforcement activities. Once approved by the LEAP, the Operations Plan will be submitted to the Council for approval at its January 2006 meeting. Listening stations for members of the public to hear the LEAP discussions will be set up at the Council office-2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607 and at the Gulf States Marine Fisheries Commission Office—2404 Government Street, Ocean Springs, MS 39564.

A copy of the operations plan and related materials can be obtained by calling the Council office at (813) 348–1630.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: December 12, 2005.

Emily Menashes,

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

[FR Doc. E5–7385 Filed 12–14–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121205B]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Shrimp Advisory Panel (AP).

DATES: The Shrimp AP meeting is scheduled to begin at 8:30 a.m. on Thursday, January 5, 2006.

ADDRESSES: The meeting will be held at the Spring Hill Suites Houston Hobby Airport, 7922 Mosley Road, Houston, Texas 77061.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Deputy Executive Director; telephone (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Shrimp AP will receive reports from the National Marine Fisheries Service (NMFS) on the status and health of the shrimp stocks as well as a report on the biological and economic aspects of the 2005 Cooperative Shrimp Closure with the state of Texas. The Shrimp AP may make recommendations for a cooperative closure with Texas for 2006. The Shrimp AP will review scoping documents for both Amendment 27 to the Reef Fish Fishery Management Plan (FMP)/Amendment 14 to the Shrimp FMP and Amendment 28 to the Reef Fish FMP/Amendment 15 to the Shrimp FMP. Joint Reef Fish Amendment 27/ Shrimp Amendment 14 proposes actions that deal with adjustments to the total allowable catch (TAC) for red snapper; size limits; bag limits; recreational season dates; and the certification of new shrimp bycatch reduction devices (BRDs). The amendment will also look at shrimp limits on trawling gear, shrimp restrictions on the transfer of vessel permits, and possible area closures for shrimp.

Joint Reef Fish Amendment 28/ Shrimp Amendment 15 will consider such issues as gear restrictions for the reef fish fishery; establishing commercial fishing seasons; further reducing bycatch; as well as other management alternatives.

The Shrimp AP consists principally of commercial shrimp fishermen, dealers, and association representatives.

Although other non-emergency issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (M-SFCMA), those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. Copies of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: December 12, 2005.

Emily Menashes,

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

[FR Doc. E5–7386 Filed 12–14–05; 8:45 am]

BILLING CODE 3510–22–S

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 February 13, 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: December 8, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Graduate Assistance in Areas of National Need Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 225.

Burden Hours: 2,475.

Abstract: GAANN grantees must submit a performance report annually. The reports are used to evaluate grantee performance. Further, the data from the reports will be aggregated to evaluate the accomplishments and impact of the GAANN Program as a whole. Results will be reported to the Secretary in order to respond to Government Performance and Results Act (GPRA) requirements.

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 2955. 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 Joseph Schubart at his e-mail address *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. E5–7347 Filed 12–14–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 17, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 8, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: FY 2006 Migrant Education Program (MEP) Consortium Incentive Grants.

Frequency: Biennially.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 380.

Abstract: The FY 2006 Migrant Education Program (MEP) Consortium Incentive Grant Program provides grants to State educational agencies (SEAs) that participate in consortium arrangements with another SEA or other appropriate entity to improve the delivery of services to migratory children whose education is interrupted.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2957. 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 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–7348 Filed 12–14–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–445–010]

Alliance Pipeline L.P.; Notice of Negotiated Rates

December 7, 2005.

Take notice that on November 30, 2005, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, proposed to become effective January 1, 2006:

Original Volume No. 1;
Fifth Revised Sheet No. 11;
Fifth Revised Sheet No. 12;
Fifth Revised Sheet No. 13;
Fifth Revised Sheet No. 14.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7358 Filed 12–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR04–6–003]

Cranberry Pipeline Corporation; Notice of Compliance Filing

December 7, 2005.

Take notice that on November 11, 2005, Cranberry Pipeline Corporation, filed with the Federal Energy Regulatory Commission a revised Statement of Operating Conditions in compliance with the Commission's ''Order Rejecting Partial Settlement, Establishing Transportation and Storage Rates, and Directing Filing,'' issued on September 13, 2005 in Docket Nos. PR04–6–000 and PR04–6–001.

Any person desiring to protest this rate proceeding must file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed with the Secretary of the Commission on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the FERRIS link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Comment Date: 5 p.m. eastern time on December 28, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7355 Filed 12–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–437–001]

Discovery Gas Transmission LLC; Notice of Compliance Filing

December 7, 2005.

Take notice that on November 30, 2005, Discovery Gas Transmission LLC (Discovery) tendered for filing in compliance with Commission's Letter Order issued November 8, 2005, as part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 124 and Substitute Ninth Revised Sheet No. 196, with an effective date of September 1, 2005.

Discovery states that copies of the filing have been mailed to each of its customers, interested state commissions and other interested persons.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7359 Filed 12–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–070]

Dominion Transmission, Inc.; Notice of Compliance Filing

December 7, 2005.

Take notice that on November 30, 2005, Dominion Transmission, Inc. (DTI) submitted a compliance filing to the Commission's Letter Order issued November 15, 2005, in Docket No. RP96–383–068.

DTI states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7360 Filed 12–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR06–3–000]

Enogex Inc.; Notice of Petition for Rate Approval

December 7, 2005.

Take notice that on November 21, 2005, Enogex Inc. (Enogex), filed with the Federal Energy Regulatory Commission zonal fuel factors for the East and West Zones on its system for Fuel Year 2006 as calculated pursuant to the terms of Enogex's filed fuel tracker and pursuant to the terms of the settlement approved in Docket Nos. PR02–10–000, PR04–15–000, PR04–16–000 and PR05–3–000. Enogex states that pursuant to the settlement, it has established zonal fuel percentages, one for each of the two zones.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the FERRIS link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Comment Date: 5 p.m. eastern time on December 28, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7356 Filed 12–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–081]

Gas Transmission Northwest Corporation; Notice of Negotiated Rates

December 7, 2005.

Take notice that on November 30, 2005, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the following tariff sheets, to become effective December 1, 2005:

Twenty-Eighth Revised Sheet No. 15,
Seventh Revised Sheet No. 17.

GTN states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7351 Filed 12–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–220–019]

Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rate Agreement

December 7, 2005.

Take notice that on November 30, 2005, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed for a disclosure, a transportation service agreement pursuant to Great Lakes' Rate Schedule FT entered into by Great Lakes and Tenaska Marketing Ventures (Tenaska) (FT Service Agreement). The FT Service Agreement filed reflects a negotiated rate arrangement commencing December 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.*

Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7361 Filed 12–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–19–000]

Illinois Municipal Electric Agency; Notice of Filing

December 7, 2005.

Take notice that on October 8, 2005, Illinois Municipal Electric Agency tendered for filing an initial Rate Schedule No. 1 and supporting cost data to establish its annual revenue requirements for providing Reactive Supply & Voltage Control from Generation Sources.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on December 16, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7362 Filed 12–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–291–000]

New York Independent System Operator, Inc.; Notice of Filing

December 7, 2005.

Take notice that on December 5, 2005, the New York Independent System Operator, Inc. (NYISO) pursuant to section 205 of the Federal Power Act amending its tariff to temporarily defer the expiration of tariff provisions governing the calculation of Voltage Support Service payments.

NYISO states that it has electronically served a copy of this filing on the official representative of each of its customers, on each participant on its Market Participants committees, and on the New York State Public Service Commission. NYISO further states that copies of the filing were mailed to electric utility regulatory agencies of New Jersey and Pennsylvania.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on December 15, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7354 Filed 12–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–1325–002, ER05–1319–002, ER05–1324–002]

Pacific Gas and Electric Company; Notice of Filing

December 7, 2005.

Take notice that on November 25, 2005, Pacific Gas and Electric Company (PG&E) tendered for filing its Wholesale Distribution Tariff Small Generator Interconnection Procedures and Small Generator Interconnection Agreement in compliance with Commission Order issued on October 11, 2005, 112 FERC ¶ 61,021.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as

appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on December 16, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7353 Filed 12–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–1324–003]

San Diego Gas & Electric Company; Notice of Compliance Filing

December 7, 2005.

Take notice that on November 28, 2005, tendered for filing revisions to its Wholesale Distribution Open Access Tariff, SDG&E FERC Electric Tariff, Original Volume No. 6 to reflect the directives of Commission Order issued on October 11, 2005, 113 FERC ¶ 61,027.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on December 19, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7352 Filed 12–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–426–026]

Texas Gas Transmission, LLC; Notice of Compliance Filing

December 7, 2005.

Take notice that on November 30, 2005, Texas Gas Transmission, LLC (Texas Gas), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective December 1, 2005:

First Revised Sheet No. 55
Original Sheet No. 55A
Sixth Revised Sheet No. 56

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7357 Filed 12–14–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2005–0073; FRL–8008–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Notice of Arrival of Pesticides and Devices, EPA ICR Number 0152.08, OMB Control Number 2070–0020

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 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. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 17, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2005–0073, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket, 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: Stephen Howie, Office of Enforcement and Compliance Assurance (2225A) , Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–4146; fax number: 202–564–0085; e-mail address: *howie.stephen@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 July 27, 2005 (70 FR 43405–43407), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). No comments were received.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OECA–2004–0053, which is available for public viewing at the Enforcement and Compliance 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 Enforcement and Compliance Docket is (202) 566–1927. An electronic version of the public docket is available at *http://www.regulations.gov.* Use *http://www.regulations.gov* 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 *http://www.regulations.gov* 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 *http://www.regulations.gov*. 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 *http://www.regulations.gov*. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Notice of Arrival of Pesticides and Devices.

Abstract: The U.S. Customs and Border Protection (Customs) regulations at 19 CFR 12.112 require that an importer desiring to import pesticides into the United States shall, prior to the shipment's arrival, submit a Notice of Arrival of Pesticides and Devices (EPA Form 3540–1) to EPA, who will determine the disposition of the shipment. After completing the form, EPA returns the form to the importer, or his agent, who must present the form to Customs upon arrival of the shipment at the port of entry. This is necessary to ensure that EPA is notified of the arrival of pesticides and devices as required by the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) section 17(c) and has the ability to examine such shipments to determine whether they are in compliance with FIFRA.

The form requires identification and address information of the importer or his agent and information on the identity and location of the imported pesticide or device shipment.

When the form is submitted to EPA regional personnel for review it is examined to determine whether the shipment should be released for entry upon arrival or alternatively whether it should be detained for examination. The responsible EPA official returns the form to the respondent with EPA instructions to Customs as to the disposition of the shipment.

Upon the arrival of the shipment, the importer presents the completed NOA to the District Director of Customs at the port of entry. Customs compares entry documents for the shipment with the Notice of Arrival and notifies the EPA Regional Office of any discrepancies which the EPA will resolve with the importer or broker. At this point the shipment may be retained for examination. If there are no discrepancies, Customs follows instructions regarding release or detention. If EPA inspects the shipment and it appears from examination of a sample that it is adulterated, misbranded or otherwise violates the provisions of FIFRA, or is otherwise injurious to health or the environment, the pesticide or device may be refused admission into the United States.

This reporting requirement is needed to inform EPA of pesticides arriving in the customs territory of the United States and to ensure compliance with FIFRA by the responsible party importing pesticides. This reporting requirement is needed to meet direct statutory requirements of FIFRA regarding notification of EPA of such arrivals.

The information collected is used by EPA regional pesticide enforcement and compliance staff and the headquarters Office of Enforcement and Compliance Assurance and Office of Pesticide Programs. The U.S. Department of Homeland Security (Customs), the Department of Agriculture, the Food and Drug Administration, and other Federal agencies may also make use of this information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 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 0.3 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: Pesticide importers.

Estimated Number of Respondents: 25,000.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 7500.

Estimated Total Annual Cost: $379,065, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 1950 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an adjustment in the estimate of the number of respondents.

Dated: December 5, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–24074 Filed 12–14–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2005–0048; FRL–8008–7]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Wet-formed Fiberglass Mat Production (Renewal); ICR Number 1964.03; OMB Number 2060–0496

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 January 17, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2005–0048, to (1) EPA online using *http://www.regulations.gov* (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 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: María Malavé, Compliance Assessment and Media Programs Division (Mail Code 2223A), Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, 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 No. EPA–HQ–OECA–2005–0048, 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 at *http://www.regulations.gov*. Use *http://www.regulations.gov* 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 *http://www.regulations.gov* 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 *http://www.regulations.gov*. 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 *http://www.regulations.gov*. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for Wet-formed Fiberglass Mat Production (Renewal).

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Wet-formed Fiberglass Mat Production were proposed on May 26, 2000 (65 FR 34251), and promulgated on April 11, 2002 (67 FR 17823). These standards apply to new and existing component processes at industrial facilities that manufacture wet-formed fiberglass mat including preparation of glass fibers, formation of fibers into a fiberglass mat, saturation with urea-formaldehyde binder solution, curing and drying the binder-coated fiberglass mat, cooling the mat, and trimming, cutting, and packaging. This information is being collected to assure compliance with 40 CFR part 63, subpart HHHH.

The monitoring, recordkeeping, and reporting requirements outlined in these rules are similar to those required for other NESHAP regulations. Consistent with the NESHAP General Provisions (40 CFR part 63, subpart A), respondents are required to submit initial notifications, conduct performance tests, and submit semiannual reports. They are also required to maintain records of applicability determinations; performance test results; exceedances; periods of startup, shutdown, or malfunction; monitoring records; and all other information needed to determine compliance with the applicable standard.

An owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. Records and reports must be retained for a total of 5 years, two years on-site. The files may be maintained on microfilm, on a computer or floppy disks, on magnetic tape disks, or on microfiche. 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 United States Environmental Protection Agency (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 61 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: Manufacturers of wet-formed fiberglass mats.

Estimated Number of Respondents: 14.

Frequency of Response: Initial, semiannual and on occasion.

Estimated Total Annual Hour Burden: 1,966 hours.

Estimated Total Annual Costs: $158,672, which includes $0 Capital Expense/ startup costs, $0 Operation and Maintenance costs, and $158,672 in Respondent Labor costs.

Changes in the Estimates: The decrease in labor burden to industry from the most recently approved ICR from 2,983 hours to 1,966 hours is due to the assumptions that existing sources are in compliance with the initial rule requirements and that there will be no new lines constructed over the three-year period of this ICR.

The total annualized capital and operations and maintenance costs decreased from $2,000 to none due to the lack of capital/startup costs associated with new sources purchasing continuous emission monitoring equipment.

There was also an increase in labor rates for both industry and the Federal Government; however, it did not offset the reduction in labor burden described above.

Dated: December 5, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–24075 Filed 12–14–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8008–9]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement and consent order; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement, which would be entered as a consent order, to address a lawsuit filed by South Jersey Environmental Justice Alliance (''SJEJA''), New Jersey Public Interest Research Group, South Camden Citizens in Action, and New Jersey Environmental Federation (collectively the ''plaintiffs''): *SJEJA* v. *Johnson*, 05–6891 (RJH) (S.D.N.Y.). On or about August 2, 2005, the plaintiffs filed a complaint alleging that they had submitted a petition to EPA seeking an objection to a Clean Air Act Title V permit issued by the New Jersey Department of Environmental Protection to Camden County Energy Recovery Associates for its facility in Camden, New Jersey, and that the Administrator had failed to perform his nondiscretionary duty to respond to the petition within sixty days of the date it was filed. Under the terms of the proposed settlement and consent order, EPA has agreed to respond to the petition by January 20, 2006, and the plaintiffs have agreed to dismiss their suit with prejudice shortly thereafter. In addition, EPA has agreed to pay the plaintiffs a specified amount in settlement of the plaintiffs' claims for attorneys' fees in this matter.

DATES: Written comments on the proposed settlement and consent order must be received by January 17, 2006.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2005–0472, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Amy Huang Branning, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–1744; fax number (202) 564–5603; e-mail address: *branning.amy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement and Consent Order

This proposed settlement and consent order would resolve a lawsuit seeking a response to a petition to object to a Title V permit issued by the New Jersey Department of Environmental Protection to Camden County Energy Recovery Associates for its facility in Camden, New Jersey (permit II–2005–01). Under the proposed settlement, if neither EPA nor the Department of Justice withdraws its consent to the proposed settlement following the thirty (30)-day comment period provided in this Notice, the plaintiffs and EPA have agreed to jointly ask that the Court enter this settlement as a consent order. The consent order, if entered, would require that the Administrator issue a response to the petition by January 20, 2006 and that the plaintiffs dismiss their lawsuit ten (10) days after the Administrator provides notice of its Order in the **Federal Register**. The consent order would also require that EPA pay the plaintiffs a specified amount in settlement of their claims for attorneys' fees. The proposed settlement and consent order do not require the Administrator to respond to the petition in any particular way.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement and consent order from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement and consent order if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent

with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to this proposed settlement and consent order should be withdrawn, the terms of the proposed consent order will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement and Consent Order

A. How Can I Get a Copy of the Proposed Settlement?

Direct your comments to the official public docket for this action under Docket ID No. EPA–HQ–OGC–2005–0472 which contains a copy of the proposed settlement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, 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 Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov*. You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: December 8, 2005.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. 05–24077 Filed 12–14–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2003–0195]; FRL–7751–1]

Pesticide Product; Registration Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide products Topramezone Technical and Topramezone SC Herbicide containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305–6224; and e-mail address: *miller.joanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number

EPA–HQ– OPP–2003–0195. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), 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.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

Agency Website: EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed use of topramezone, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of topramezone when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Applications

1. *EPA Registration Number:* 5481-523. *Applicant:* Amvac Chemical Corp., 4695 MacArthur Court, Suite 1250, Newport Beach, CA 92660. *Product Name:* Topramezone Technical. *Type of product:* Herbicide. *Active ingredient:* Topramezone, [3-(4,5-dihydro-isoxazol-3-yl)-4-methylsulfonyl-2-methylphenyl](5-hydroxy-1-methyl-1H-pyrazol-4-yl)methanone at 99.2%. *Proposed classification/Use:* None. For the formulation of herbicides.

2. *EPA Registration Number:* 5481-524. *Applicant:* Amvac Chemical Corp. *Product Name:* Topramezone SC Herbicide. *Type of product:* Herbicide. *Active ingredient:* Topramezone, [3-(4,5-dihydro-isoxazol-3-yl)-4-methylsulfonyl-2-methylphenyl](5-hydroxy-1-methyl-1H-pyrazol-4-yl)methanone at 29.7%. *Proposed classification/Use:* None. For weed control on corn.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 30, 2005

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 05–24094 Filed 12–14–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP–2005–0466; FRL–7749–7]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket identification (ID) number EPA-HQ-OPP–2005–0466, must be received on or before January 17, 2006.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Andrew C. Bryceland, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6928; e-mail address:*bryceland.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532) .

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of

this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number EPA-HQ-OPP–2005–0466. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), 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.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the '' **Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

Agency Website. EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov*. Follow the online instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number EPA-HQ-OPP–2005–0466. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number EPA-HQ-OPP–2005–0466. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD–ROM*. You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number EPA-HQ-OPP–2005–0466.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number EPA-HQ-OPP–2005–0466. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Application

EPA received the following application to register a pesticide product containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the applications.

Product Containing Active Ingredients not Included in any Previously Registered Products:

File Symbol: 56336–UT. *Applicant:* Suterra LLC, 213 S.W. Columbia St., Bend, Oregon 97702–1013. *Product Name:* Checkmate BAW Technical Pheromone. [Biochemical for mating disruption of Beet Armyworm Moth (*Spodoptera exigua*)].*Active ingredient:* (Z,E)–9,12–Tetradecadien–1–yl Acetate at 87.66%. *Proposed classification/Use:* Biochemical for the mating disruption of Beet Armyworm Moth (*Spodoptera exigua*) for manufacturing use only.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 7, 2005.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 05–24098 Filed 12–14–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8009–1]

Safe Drinking Water Act Determination; Underground Injection Control Program, Determination of Indian Country Status for Purposes of Underground Injection Control Program Permitting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of comment period extension.

SUMMARY: On November 2, 2005, the Environmental Protection Agency (EPA) published a notice of prospective determination of the Indian country status of approximately 160 acres of land located in the southeast portion of Section 8, Township 16N, Range 16W, in the State of New Mexico (70 FR 66402). That notice requests public input regarding whether the Section 8 land is part of a dependent Indian community under 18 U.S.C. 1151(b) and, thus, considered to be ''Indian country.'' This determination is necessary in order to establish whether EPA or the New Mexico Environment Department is the appropriate agency to issue a particular underground injection control permit under the Safe Drinking Water Act.

EPA sought responses to the notice by January 3, 2006. In response to requests from the public seeking additional time to fully analyze the issues, gather requested information, and prepare comments, we are extending the period for submitting comments and information, as provided in the notice, to January 31, 2006.

DATES: Comments and information on this matter, and any request that a public hearing be held, must be received by January 31, 2006. EPA will consider all timely comments and information as described in the original November 2, 2005 notice.

ADDRESSES: Written comments and information should be submitted to David Albright, Ground Water Office Manager, at U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, Mail Code: WTR–9, San Francisco, CA 94105. You may also submit comments and information by fax at 415.947.3549 or by e-mail at *albright.david@epa.gov.*

FOR FURTHER INFORMATION CONTACT: David Albright, at *albright.david@epa.gov,* or 415.972.3971.

SUPPLEMENTARY INFORMATION: For supplementary information about this matter, please refer to the November 2, 2005 **Federal Register** document (70 FR 66402). If you have questions, please contact the person listed above under **FOR FURTHER INFORMATION CONTACT**.

Dated: December 6, 2005.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 05–24073 Filed 12–14–05; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

DATE AND TIME: Wednesday, December 21, 2005, 9 a.m. eastern time.

PLACE: Clarence M. Mitchell, Jr., Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and
2. Modification of EEOC Order 120—Boundaries of the Baltimore Field Office

Note: In accordance with the Sunshine Act, the meeting will be open to the public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions).

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

Dated: December 12, 2005.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 05–24118 Filed 12–12–05; 4:44 am]

BILLING CODE 6570–06–M

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *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 30, 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. SouthwestUSA Corporation, Las Vegas, Nevada; to acquire 100 percent of Trustar Corporation, and thereby indirectly acquire Nevada Trust Company, both of Las Vegas, Nevada, and thereby engaging in trust activities pursuant to section 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, December 12, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–7373 Filed 12–14–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-06–06AM]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–4766 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Intimate Partner Violence (IPV) National Media Campaign—Choose Respect—Renewal—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Intimate partner and sexual violence is a significant problem in the United States. According to the National Violence against Women Survey, an intimate partner physically assaults or rapes approximately 1.5 million women and 850,000 men in the United States each year. Many more individuals are subjected to threats of violence and psychological and emotional abuse. Alarmingly, intimate partner violence (IPV) behaviors are manifested in youth populations. The literature suggests that attitudes and behaviors can be shaped and reinforced more easily and more effectively as individuals are developing in youth than after they have been firmly established. To begin to address IPV and sexual violence in youth populations, the CDC's NCIPC has developed a media campaign entitled, ''Choose Respect.'' The campaign targets prevailing norms that support victimization and perpetration of violence against women. Because attitudes and behaviors related to IPV begin to manifest early on, CDC will focus its efforts on early adolescents, and on the people who influence them.

This project will implement and evaluate the Choose Respect Campaign in a national roll-out in twelve states: Arizona, California, Connecticut, Illinois, Indiana, Michigan, Minnesota, New York, North Carolina, Texas, Washington, and Washington D.C. The campaign will target youth as the primary audience and parents and teachers as secondary audiences. A

baseline and post-campaign survey will be conducted with adolescents, their parents and their teachers to determine outcomes of the campaign including attitudes, beliefs and intended behaviors toward IPV and sexual violence both before and after implementation of the campaign. The baseline information collected prior to the campaign launch will assist CDC in tailoring the communication materials to each of the middle schools and community groups selected from the target markets. The evaluation will then utilize these baseline measures along with the information collected following implementation to assess the campaign's success at decreasing IPV-tolerant attitudes, increasing the identification of appropriate ways to respond in situations that could lead to IPV, and increasing the awareness of resources to help facilitate discussions about appropriate dating behavior.

The pre-post research design of this campaign evaluation will aid CDC in assessing the changes in attitudes, beliefs and behaviors associated with the campaign.

The goal of CDC's Media Campaign, Choose Respect, is to increase the perception among adolescents that any form of violence between intimate partners, whether physical, verbal or sexual is considered inappropriate and unacceptable. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden hours
Teachers Baseline Survey	600	1	15/60	150
Parents Baseline Survey	6000	1	15/60	1500
Adolescents Baseline Survey	6000	1	25/60	2500
Teachers Post-campaign Survey	600	1	15/60	150
Parents Post-campaign Survey	6000	1	15/60	1500
Adolescents Post-campaign Survey	6000	1	25/60	2500
Total	25,200			8300

Dated: December 7, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E5–7378 Filed 12–14–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–06AL]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–4766 or send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Customer Surveys Generic Clearance for the National Center for Health Statistics -New-National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

As part of a comprehensive program, the National Center for Health Statistics (NCHS) plans to assess its customers' satisfaction with the quality and relevance of the information it produces. NCHS will conduct voluntary customer surveys to assess strengths in agency products and services. Results of these surveys will be used in future planning initiatives. This is a request for a generic approval from OMB to conduct customer surveys over the next three years.

The data will be collected using a combination of methodologies appropriate to each survey. These may include: Evaluation forms, Mail surveys, Focus groups, Automated and electronic technology (*e.g.*, e-mail, Web-based surveys), and Telephone surveys.

Systematic surveys of several groups will be folded into the program. Among these are Federal customers and policy makers, state and local officials who rely on NCHS data, the broader educational, research, and public health community, and other data users. The 2006 surveys will include: (1) a self-selected broad-based group of data users who register for and/or attend NCHS sponsored conferences and (2) all persons who access the NCHS Website. Data items will include (in broad categories) information regarding an individual's gender, age, occupation, affiliation, location, etc. The proposed questions will attempt to obtain information that will characterize the respondents' familiarity with and use of NCHS data, their assessment of usefulness, general satisfaction with available services and products, and suggestions for improvement of services and products. There is no cost to respondents other than their time to participate in the survey.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of survey	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden hours
Questionnaire for conference registrants/attendees	1,000	1	15/60	250
Focus groups	80	1	1	80
Web-based	1,000	1	20/60	333
Other customer surveys	400	1	15/60	100
Total				763

Dated: December 8, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E5–7382 Filed 12–14–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0016]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Evaluation of Consumer-Friendly Formats for Brief Summary in Direct-to-Consumer Print Advertisements for Prescription Drugs: Study 1

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 17, 2006.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Evaluation of Consumer-Friendly Formats for Brief Summary in Direct-to-Consumer (DTC) Print Advertisements for Prescription Drugs: Study 1

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 903(b)(2)(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393(b)(2)(c)) authorizes FDA to conduct research relating to drugs and other FDA-regulated products in carrying out the provisions of the act. Under the act, a drug is misbranded if it's labeling or advertising is false or misleading. In addition, section 502(n) of the act (21 U.S.C. 352(n)) specifies that advertisements for prescription drugs and biological products must provide a true statement of information ''* * * in brief summary * * *'' about the advertised product's ''* * * side effects, contraindications and effectiveness * * *.'' Generally, the display text of an advertisement presents a fair and balanced disclosure of the product's indication and benefits and the product's side effects and contraindications. The prescription drug advertising regulations (§ 202.1(e)(3)(iii) (21 CFR 202.1(e)(3)(iii))) specify that the information about risks must include each specific side effect and contraindication from the advertised drug's approved labeling. The regulation also specifies that the phrase ''side effect and contraindication'' refers to all of the categories of risk information required in the approved product labeling written for health professionals, including the Warnings, Precautions, and Adverse Reactions sections. Thus, every risk in an advertised drug's approved labeling must be addressed to meet these regulations.

In recent years, FDA has become concerned about the adequacy of the brief summary in DTC print advertisements. Although advertising of prescription drugs was once primarily addressed to health professionals, consumers increasingly have become a primary target audience, and DTC advertising has dramatically increased in the past few years. Results of the FDA 2002 survey on DTC advertising (available at *http://www.fda.gov/cder/ddmac/researchka.htm*) provide some information regarding the extent to which consumers read these ads and the brief summary that accompanies the main ad—41 percent of respondents in 2002 reported they do not usually read any of the brief summary. Use of the brief summary is a function of whether they have an interest in the condition; about 45 percent of those having a particular interest in the advertised drug read all or almost all of the brief summary.

Because the regulations do not specify how to address each risk, sponsors can use discretion in fulfilling the brief summary requirement under § 202.1(e)(3)(iii). Frequently, sponsors print in small type, verbatim, the risk-related sections of the approved product labeling (also called the package insert, professional labeling, or prescribing information). This labeling is written for health professionals, using medical terminology. FDA believes that while this is one reasonable way to fulfill the brief summary requirement for print advertisements directed toward health professionals, this method may be difficult for consumers to understand.

Consumers may use the brief summary for many purposes, such as to learn about new treatments, to compare with OTC medications, to form a benefit-risk judgment, to make brand comparison, to generate questions for their healthcare provider, and to verify promotional claims. All of these possible uses contribute to achieving more informed healthcare decisions.

These different uses likely involve different mental processing strategies, therefore a balanced assessment of possible changes in the format and content of the brief summary is necessary. FDA's objectives for communicating important information

and sponsors' discretion in choosing what specific information to include requires an understanding of the range of consumer uses of the brief summary.[1] Thus, as a first step in assessing content and format options for the brief summary, this research will investigate the nature of consumers' goals when they read prescription drug print advertisements, and the relative usefulness of the information topics presented.

This study will be the first in a series of studies examining the format and content of the brief summary in DTC print advertisements. This first study will consider the full context of the ''side effect, contraindications, and effectiveness'' information presented in prescription drug advertisements, in terms of what consumers are trying to learn from the entire ad, including the display (or main) page and the brief summary, and what about each is useful. In addition, the research will directly consider caregivers, another important audience for prescription drug advertising.

This study will employ a between-subjects crossed factorial design using a mall-intercept protocol. The factors will be medical condition (high cholesterol versus obesity versus asthma versus allergies) and riskiness (high versus low) of the drug. Consumers will be screened to be either currently diagnosed with one of the previously mentioned conditions or currently giving care to someone who has been diagnosed. Participants will be shown one ad. For example, an ad for a high risk drug for asthma or an ad for a low risk drug for high cholesterol. Then a structured interview will be conducted with each participant to examine a number of important perceptions about the brief summary, including perceived riskiness of the drug, ratings of individual sections in the brief summary information, and perceived usefulness of brief summary information. Finally, demographic and health care utilization information will be collected to verify the generalizability of the sample. Participants will be offered a $5 incentive for their time. A total of 420 participants will be involved. This will be a one time (rather than annual) collection of information.

In the **Federal Register** of February 8, 2005 (70 FR 6691), FDA announced the availability of the draft guidance and requested comments for 60 days on the information collection. Two comments were received. Both comments included statements of support for the research itself.

A. Comments To Be Adopted

In the original proposal, our stimulus ad displayed a prescription drug that was available in a new patch form. We proposed this administration mechanism because we required a legitimate advertising draw that was not safety or efficacy based and thought a new administration form would solve these issues. Comment 1 expressed concern that because the patch is a less common mode of administration than the typical pill, such a novel product might alter individuals' normal search behavior and skew our results. The comment suggested that we present a drug with the standard administration form, a pill. With consideration, we have decided to drop the patch delivery mechanism and instead feature a ''once-weekly'' dosing regimen as a differentiation point in the advertisement. We feel this dosing claim will be realistic, interesting, not confounded with safety or efficacy, and should avoid potential problems related to less common administration mechanisms.

In the notice, we had proposed examining education level by blocking respondents by those who have attended some college or less and those who have attended some college or more. Comment 2 suggested that we segment education level further than proposed, and that we specifically add more ''high school or less'' individuals. We agree that education is an important variable that may influence key responses, and will measure finer segments of education. Additionally, we will ensure that a minimum of 30 percent of our sample has a high school degree or lower.

Comment 2 also noted that to reflect reality we should ensure a mix of respondents within the diagnosed population who are currently being treated and those who have yet to be treated. Although we do not have the resources to screen and solicit subjects and control on this variable, we plan to inquire as to participants' prescription and nonprescription drug usage and aim for a blend of individuals currently being treated and those yet to be treated.

We concur with the comment's concern that participants be recruited in a manner that does not bias their responses. We plan to use blinded recruitment so that respondents do not know exactly why they were chosen for the study, the nature of the interview, or the purpose of the research, as suggested by comment 2.

Comment 1 suggested that the main body of our stimulus ad fulfill all of the regulatory requirements for a truthful, fair, and balanced ad. The final stimulus ad has been evaluated by reviewers in the Division of Drug Marketing, Advertising and Communications for compliance with all applicable regulations.

B. Comments To Be Adopted With Modifications

The proposed mock brief summary contained a wide variety of topics culled from a review of existing brief summaries and from the input of focus groups. Comment 1 suggested that we remove all sections in our mock brief summary not currently required by regulation. We considered this suggestion and agree that some sections may be removed at this stage in the research. For example, a section on ''Lab Test Abnormalities'' may not be useful to consumers during initial exposure to a brand in a magazine read-through, as simulated in our study. However, the main purpose of our first study is to determine how people use the brief summary and what sections people find more or less useful. In order to fully assess this question, we feel that we must include sections that are not currently required.

It is reasonable to assume that people use the brief summary to decide whether to talk to their doctor about the advertised drug. This may be a reasonable assumption; however, people may also use the brief summary to verify claims on the main page, to compare the advertised drug to another, or to keep on hand as a reference. Until we know how people use the brief summary, we cannot assume that certain sections are irrelevant. Moreover, without testing this assumption, we cannot assume that the sections currently required by regulation are the only valuable sections. Those sections currently required by law (e.g., warnings, precautions, contraindications, adverse events) are also those that consumers are likely to find most useful, and will always be placed in the first column in our mock brief summaries. Nevertheless, we find it impossible to fully address our research question without including other sections.

In balancing the tradeoff between the realism of the magazine-reading situation and the need for experimenter control, our original proposal had left the issue of mode of presentation open. Both comments suggested that it would be valuable to measure the amount of time each participant spends reading

[1] For other FDA research investigating the relationship between consumer processing and issues of format and content, see Levy, Fein and Schucker, ''Performance Characteristics of Seven Nutrition Label Formats,'' *Journal of Public Policy and Marketing*, (Spring) 15(1), 1–15, 1996.

the main page and the brief summary page of the display ads. After much discussion we have decided to initially present the stimulus ad on a computer screen. Participants will be presented with a page or two of instructions and their reading speed will be tracked when they click the option to move to the next page. Then they will be presented with the test ad as well as two other filler ads, at least one of which will have two pages; a ''front'' and a ''back.'' These ads will enable us to determine basic reading speeds as well as comparative speeds between the main page and brief summary page and between the test ad and other ads. Given the importance of the reading time variable, we have chosen to exercise more experimental control to assess reading times and page-switching (via computer-based recording of times and switching) rather than present the test ad in a magazine mock-up which would not permit a reliable assessment of these reading behaviors.

Another comment discussed sample size issues, limited resources, and tradeoffs. Comment 2 suggested that we have a minimum of 75 respondents per cell, rather than 30 per cell. Comment 1 described a plan that would have doubled our sample size from approximately 400 to approximately 800, but expressed understanding that resource limitations may prohibit this approach. Therefore, this comment suggested reducing the number of medical conditions studied from four to two, maintaining asthma and high cholesterol. Additionally, the comment suggested that disease severity within the condition may be an important variable that affects consumer use of the brief summary.

Our modifications have taken these related comments into account. Our original plan was a 4 x 2 design, with four medical conditions (asthma, high cholesterol, allergies, and obesity) and two levels of drug risk severity (high and low) included. We proposed this design for several reasons. First, to ensure generalizability, we suggested four medical conditions that would vary in symptom presentation, severity, and chronicity. Second, we manipulated drug risk severity to address the idea that information-search of the brief summary page might differ given the risk information included on the main page.

On the basis of all comments, we have revised this design. We now propose a 3 x 2 design, with three medical conditions (asthma, high cholesterol, and obesity) and two levels of disease severity (high and low). Dropping the allergy category, which already includes a number of OTC options, still leaves us with a range of conditions. We will maintain the obesity category due to its public health implications and current public interest. We were persuaded by the argument that severity within a disease may be an important driver of information-search and will include this variable as a covariate.

C. Comments Considered and Not Adopted

Comment 2 suggested that we conduct qualitative research before embarking on a quantitative project. Specifically, it was suggested that qualitative one-on-one interviews may better address the questions we plan to ask. We have already conducted focus groups on this question that have guided the development of the questions we plan to ask in the three quantitative studies and provided initial ideas about how people use the brief summary and what they prefer in terms of content and format.

Comment 2 also requested that we ask more qualitative questions at the beginning of the study before delving into quantitative questions. We are, however, limited to approximately 20 minutes with each respondent, and can therefore ask only a limited number of questions. Recognizing this, we have included as many open-ended questions as we can, but at this time we feel we cannot add substantially more questions to the interview.

Comment 2 also suggested that we use an existing, known prescription product in our stimulus materials instead of a new-to-market, novel one. Given the research goal, we feel it is essential to control for likely confounds that might arise from prior experience with existing, known product. Therefore, we will continue to use a new-to-market drug as a stimulus.

Comment 1 recommended that we avoid randomly selecting people face-to-face inside a mall, but instead use a random-digit dialing procedure to recruit participants. We discussed with the contractor using a prescreened panel. However, given resource constraints, the contractor felt that recruitment would be more effective if the traditional mall-intercept procedure was employed. As noted earlier, prior to the study these respondents will not be sensitized to the specific task or the purpose of the research; participants will be informed of these issues at the end of the study.

We will not be using a mock-up of a magazine, as suggested by comment 1, for reasons discussed earlier in this document. Our main interest is in participants' viewing of the brief summary when they have viewed it, rather than whether it is compelling enough to stop to look at. We instead plan to use computer technology to measure the amount of time spent reading the main page and the brief summary page. Based in part on comment 1's suggestions, we will include at least two other advertisements, to obtain comparative reading times, and to diffuse the pressure on the reading of the stimulus ad.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
800 (screener)	1	800	.017	14
420 (survey)	1	420	.33	139
Total				153

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 8, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–24040 Filed 12–14–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0389]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Reprocessed Single-Use Device Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 17, 2006..

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Reprocessed Single-Use Device Labeling (21 U.S.C. 352(u))

Section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352), among other things, establishes requirements that the label or labeling of a medical device must meet so that it is not misbranded and subject to regulatory action. The Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Public Law 107–250) amended section 502 of the act to add section 502(u) to require devices (both new and reprocessed) to bear prominently and conspicuously the name of the manufacturer, a generally recognized abbreviation of such name, or a unique and generally recognized symbol identifying the manufacturer. Section 2(c) of The Medical Device User Fee Stabilization Act of 2005 (MDUFSA) (Public Law 109–43) amends section 502(u) of the act by limiting the provision to reprocessed single-use devices (SUDs) and the manufacturers who reprocess them. Under the amended provision, if the original SUD or an attachment to it prominently and conspicuously bears the name of the manufacturer, then the reprocessor of the SUD is required to identify itself by name, abbreviation, or symbol, in a prominent and conspicuous manner on the device or attachment to the device. If the original SUD does not prominently and conspicuously bear the name of the manufacturer, the manufacturer who reprocesses the SUD for reuse may identify itself using a detachable label that is intended to be affixed to the patient record. MDUFSA was enacted on August 1, 2005, and becomes self-implementing on August 1, 2006.

The requirements of section 502(u) of the act impose a minimal burden on industry. This section of the act only requires the manufacturer, packer, or distributor of a device to include their name and address on the labeling of a device. This information is readily available to the establishment and easily supplied. From its registration and premarket submission database, FDA estimates that there are 3 establishments that distribute approximately 300 reprocessed SUDs. Each response is anticipated to take 0.1 hours resulting in a total burden to industry of 30 hours.

In the **Federal Register** of September 29, 2005 (70 FR 56910), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section of the Act	No. of Respondents	Annual Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
502(u)	3	100	300	0.1	30

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 8, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–24041 Filed 12–14–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0442]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Food and Drug Administration Recall Regulations (Guidelines)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''FDA Recall Regulations (Guidelines)'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 24, 2005 (70 FR 49654), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to,

a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0249. The approval expires on October 31, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: December 8, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–24042 Filed 12–14–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Filing of Annual Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, as required by the Federal Advisory Committee Act, the agency has filed with the Library of Congress the annual reports of those FDA advisory committees that held closed meetings during fiscal year 2005.

ADDRESSES: Copies are available from the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, 301–827–6860.

FOR FURTHER INFORMATION CONTACT: Theresa L. Green, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: Under section 13 of the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR 14.60(c), FDA has filed with the Library of Congress the annual reports for the following FDA advisory committees that held closed meetings during the period October 1, 2004, through September 30, 2005.

Center for Biologics Evaluation and Research:

Blood Products Advisory Committee

Cellular, Tissue and Gene Therapies Advisory Committee (formerly the Biological Response Modifiers Advisory Committee)

Vaccines and Related Biological Products Advisory Committee

Center for Devices and Radiological Health:

Medical Devices Advisory Committee (consisting of reports for the Dental Products Panel; Ear, Nose, and Throat Devices Panel; Neurology Devices Panel; and Orthopaedic and Rehabilitation Devices Panel)

Annual reports are available for public inspections between 9 a.m. and 4 p.m., Monday through Friday, at the following locations:

1. The Library of Congress, Madison Bldg., Newspaper and Current Periodical Reading Room, 101 Independence Ave. SE., rm. 133, Washington, DC; and

2. The Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Dated: December 2, 2005.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. 05–24039 Filed 12–14–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

[Funding Opportunity Number: HHS–2006–IHS–TSGP–0002; CFDA Number: 93.210]

Tribal Self-Governance Program; Negotiation Cooperative Agreement; New Funding Cycle for Fiscal Year 2006

Key Dates: Applications Due—January 20, 2006; Objective Review Committee to Evaluate Applications—March 8–9, 2006; Anticipated Project Start Date—April 1, 2006.

I. Funding Opportunity Description

The purpose of the program is to award cooperative agreements that provide negotiation resources to Tribes interested in participating in the Tribal Self-Governance Program (TSGP) as authorized by Title V, Tribal Self-Governance Amendments of 2000 of the Indian Self-Determination and Education Assistance Act of Public Law (Pub. L.) 93–638, as amended. The TSGP is designed to promote self-determination by allowing Tribes to assume more control of Indian Health Service (IHS) programs and services through compacts negotiated with the IHS. The Negotiation Cooperative Agreement provides Tribes with funds to help cover the expenses involved in preparing for and negotiating with the IHS and assists eligible Indian Tribes to prepare for Compacts and Funding Agreements (FAs) with an effective date of October 1, 2006, or January 1, 2007.

The Negotiation Cooperative Agreement provides resources to assist Indian Tribes to conduct negotiation activities that include but are not limited to:

- Analysis of the complex IHS budget to determine what programs, services, functions, and activities (PSFAs) will be negotiated.
- Development of the terms and conditions that will be set forth in a Compact and Funding Agreement (FA).
- Consultant costs such as Attorney or Financial Advisors.
- Communication Costs.
- Identification of Tribal shares that will be included in the FA.

The award of a Negotiation Cooperative Agreement is not required as a prerequisite to enter the TSGP. Indian Tribes that have completed comparable health planning activities in previous years using tribal resources but have not received a Tribal self-governance planning award are also eligible to apply. Applicants must provide a statement that the planning phase has been conducted to the satisfaction of the Indian Tribe and must include: (a) Legal and budgetary research; and (b) internal Tribal government planning and organizational preparation relating to the administration of health programs.

II. Award Information

Type of Award: Cooperative Agreement.

Estimated Funds Available: The total amount identified for Fiscal Year (FY) 2006 is $240,000 for approximately twelve (12) Tribes to enter the TSGP negotiation process for compacts beginning in Fiscal Year (FY) 2007 or Calendar Year (CY) 2007. Awards under this announcement are subject to the availability of funds.

Anticipated Number of Awards: The estimated number of awards to be funded is approximately 12.

Project Period: 12 months.

Award Amount: $20,000 per year.

Programmatic Involvement: IHS TSGP funds will be awarded as cooperative agreements and will have substantial programmatic involvement to establish a process through which Tribes can effectively approach the IHS to identify programs and associated funding which could be incorporated into programs.

The IHS roles and responsibilities will include:

- Identification of IHS staff that will consult with applicants on methods used by the IHS to manage and deliver health care.
- Provide applicants with a list of laws and regulations that provide authority for the various IHS programs.

The Grantee roles and responsibilities will include:

- Research and analysis of the complex IHS budget, at the Service Unit, Area, and Headquarters levels.
- Establishment of a basic understanding of IHS PSFAs operations at the Service Unit, Area, and Headquarters levels.

III. Eligibility Information

1. Eligible Applicants

To be eligible for a negotiation cooperative agreement under this announcement, an applicant must meet all of the following criteria:

A. Be a Federally-recognized Tribe as defined in Title V, Public Law 106–260, Tribal Self-Governance Amendments of 2000, of the Indian Self-Determination and Education Assistance Act (the Act), Public Law 93–638, as amended. However, Alaska Native Villages or Alaska Native Village Corporations, who are located within the area served by an Alaska Native regional health entity already participating in compact status, are not eligible (Pub. L. 106–260, Title V, section 12(a)(2)). Those Tribes not represented by a self-governance Tribal consortium compact that have previously received negotiation funds may still be considered to participate in the TSGP, subject to the provisions in this announcement, however, with the following exception cited in section 351, Public Law 105–277, the FY 1999 Omnibus Appropriations Bill: ''Notwithstanding any other provision of law, prior to September 1, 2001, the IHS may not disburse funds for the provision of health care services pursuant to Public Law 93–638 (25 U.S.C. 450, et seq.) with any Alaska Native Village or Alaska Native Village Corporation that is located within the area served by an Alaska Native regional health entity.''

2. Cost Sharing or Matching Funds

The Self-Governance Negotiation Cooperative Agreement Announcement does not require matching funds or cost sharing to participate in the competitive grant process.

3. Other Requirements

The following documentation is required (if applicable):

A. This program is described at 93.210 in the Catalog of Federal Domestic Assistance. There is limited competition under this announcement because the authorizing legislation restricts eligibility to Tribes that meet specific criteria. (Refer to section III, ''Eligible Applicants'' in this announcement.)

B. Request participation in self-governance by resolution by the governing body of the Indian Tribe. An Indian Tribe that is proposing a cooperative agreement affecting another Indian Tribe must include resolutions from all affected Tribes to be served.

C. Demonstrate, for three FY's, financial stability and financial management capability, which is defined as no uncorrected significant and material audit exceptions in the required annual audit of the Indian Tribe's self-determination contracts or self-governance funding agreements with any Federal agency.

D. Grantees are required to submit a current version of the organization's audit report. Audit reports can be lengthy; therefore, the applicants may submit them separately via regular mail by the due date (January 20, 2006). If the grantee determines that the audit reports are not lengthy, the applicants may scan the documents and attach them to the electronic application. Applicants must submit two copies of the audits that reflect three previous fiscal years under separate cover directly to the Division of Grants Operations, 801 Thompson Avenue, TMP 360, Rockville, MD 20852, referencing the Funding Opportunity Number, HHS–2006–IHS–TSGP–0002, as prescribed by Public Law 98–502, the Single Audit Act, as amended (see OMB Circular A–133, revised June 24, 1997, Audits of States, Local Governments, and Non-Profit Organizations). If this documentation is not submitted by the due date, the application will be considered as unresponsive and will not be considered. Applicants must include the grant tracking number assigned to their electronic submission by Grants.gov and the date submitted via Grants.gov in their cover letter transmitting the required audits for the previous three fiscal years.

E. Tribal Resolution—A resolution of the Indian Tribe served by the project must accompany the application submission. For Tribal Consortia applying for a Negotiation Cooperative Agreement, individual Tribal Council Resolutions from all individual Tribes whose PSFAs will be compacted must be submitted.

Draft resolutions are acceptable in lieu of an official resolution during the review process. However, an official signed Tribal resolution must be received by the Division of Grants Operations (DGO) by the end of the Objective Review (March 9, 2006). If an official signed resolution is not submitted by March 9, 2006, the application will be considered incomplete and will be returned as unresponsive.

*It is highly recommended that the Tribal resolution be sent by Federal Express for proof of receipt.

IV. Application and Submission Information

1. Application Package May Be Found on Grants.gov

Information regarding the electronic application process may be obtained from either of the following persons:

Ms. Mary E. Trujillo, Office of Tribal Self-Governance Operations, Indian Health Service, 801 Thompson Avenue, Suite 240, Rockville, Maryland 20852. (301) 443–7821.

Ms. Patricia Spotted Horse, Indian Health Service, Division of Grants, 801 Thompson Avenue, TMP 360, Rockville, Maryland 20852. (301) 443–5204.

Web address to obtain application kit: *http://www.ihs.gov/NonMedicalPrograms/gogp/gogp_submission.asp.*

2. Content and Form of Application Submission

A. All applications should:

- Be single spaced.
- Be typewritten.
- Have consecutively numbered pages.
- Use black type not smaller than 12 characters per one inch.
- Be printed on one side only of standard size 8½″ x 11″ paper.
- Contain a narrative that does not exceed 7 typed pages that includes the sections listed below. (The 7 page narrative does not include the work plan, standard forms, Tribal resolution(s), table of contents, budget, budget justifications, narratives, and/or other appendix items.) Public Policy Requirements: All Federal-wide public policies apply to IHS grants with exception of Lobbying and Discrimination.

3. Submission Dates and Times

Applications must be submitted on-line by January 20, 2006. Late applications not accepted for processing will be returned to the applicant and will not be considered for funding.

4. Intergovernmental Review

This funding opportunity is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' State approval is not required.

5. Funding Restrictions

A. Only one negotiation cooperative agreement will be awarded per applicant.

B. Each negotiation cooperative agreement shall not exceed $20,000. The available funds are inclusive of direct and indirect costs.

C. Negotiation awards shall not exceed a maximum period of one year.

D. Pre-award costs are not allowable.

6. Other Submission Requirements

The application must comply with the following:

A. Abstract (one page)—Summarizes the project.

B. Application for Federal Assistance (SF–424, Rev. 09/03).

C. Narrative (no more than 7 pages) with time frame chart (one page); pages numbered consecutively, including appendices, and Table of Contents, and should include the following:

(1) Background information on the Tribe.

(2) Objectives and activities that provide a description of what will be accomplished.

(3) A line-item budget and narrative justification.

(4) Appendix to include:

a. Resumes or position descriptions of key staff.

b. Contractors/Consultants resumes or qualifications.

c. Proposed Scope of Work.

d. Provide a statement that the planning phase has been conducted to the satisfaction of the Indian Tribe and must include: (a) Legal and budgetary research; and (b) internal Tribal government planning and organizational preparation relating to the administration of health programs.

Electronic Transmission—The preferred method for receipt of applications is electronic submission through Grants.gov. However, should any technical problems arise regarding the submission, please contact our Grants Policy Staff at (301) 443–6528 at least ten days prior to the application deadline. To submit an application electronically, please use the *http://www.Grants.gov* apply site. Download a copy of the application package, on the Grants.gov Web site, complete it offline and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Under the new IHS requirements, paper applications are not the preferred method. However, if you have technical problems submitting your application on-line, and you have contacted the Grants Policy Staff and advised them of the difficulties you are having submitting your application on-line, you may submit a paper application after you have downloaded the application package from Grants.gov, and send it directly to the Division of Grants Operations, 801 Thompson Avenue, TMP 360, Rockville, MD 20852 by the due date, January 20, 2006.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of 10–15 days to complete CCR registration. See below on how to apply.
- You must submit all documents electronically, including all information typically included on the SF–424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in the program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Indian Health Service will retrieve your application from Grants.gov.
- You may access the electronic application for this program on *http://www.Grants.gov.*
- You must search for the downloadable application package by CFDA number.
- To receive an application package, the applicant must provide the Funding Opportunity Number: HHS–2006–IHS–TSGP–0002.

E-mail applications will not be accepted under this announcement.

DUNS Number

Beginning October 1, 2003, applicants were required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

Applications submitted electronically must also be registered with the Central Contractor Registry (CCR). A DUNS number is required before CCR registration can be completed. Many organizations may already have a DUNS number. Please use the number listed above to investigate whether or not your organization has a DUNS number. Registration with the CCR is free of charge.

Applicants may register by calling 1–888–227–2423. Please review and complete the CCR ''Registration Worksheet'' located in the appendix of the TSGP Negotiation Cooperative Agreement application kit or on http://www.grants.gov/CCRRegister.

More detailed information regarding these registration processes can be found at *http://www.grants.gov.*

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses.

1. Criteria

Demonstration Of Previous Planning Activities (30 points)

Thoroughness and appropriateness of planning activity to proposed scope of compact is demonstrated, i.e., has the Indian Tribe determined the PSFAs to be assumed? Has the Indian Tribe determined it has the administrative infrastructure to support the assumption of the PSFAs? Are the results of what was learned or is being learned during the planning process clearly stated?

Thoroughness of Approach (25 points)

Is a specific narrative provided of the direction the Indian Tribe plans to take in the TSGP? How will the Tribe demonstrate improved health and services? Is the Indian Tribe ready to negotiate a compact to begin October 1, 2006 or January 1, 2007? Are proposed time lines for negotiations indicated?

Project Outcome (25 points)

What beneficial contributions are expected or anticipated to the TSGP projected? Is information provided on the services that will be assumed? How will any improvements be made to managing the health program under the TSGP to better serve its Tribal members? Are Tribal needs discussed in relation to programmatic alternatives and outcomes?

Administrative Capabilities (20 points)

Does the Indian Tribe clearly demonstrate knowledge and experience

in the operation and management of other health programs? Is the internal management and administrative infrastructure of the applicant described and its relationship to the successful implementation of self-governance operation of health programs explained?

Appendix Items

- Work plan for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant proposed scope of work (if applicable).
- Indirect Cost Agreement.
- Organizational chart (optional).
- Audits

2. Review and Selection Process

In addition to the above criteria/requirements, applications are considered according to the following:

A. Application Submission (Application Deadline: January 20, 2006). Applications submitted in advance of or by the deadline and verified by the tracking number will undergo a preliminary review to determine that:

- The applicant and proposed project type is eligible in accordance with this grant announcement.
- The application is not a duplication of a previously funded project.
- The application narrative, forms, and materials submitted meet the requirements of the announcement allowing the review panel to undertake an in-depth evaluation; otherwise, it may be returned.

B. Competitive Review of Eligible Applications (Objective Review: March 8–9, 2006). Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed for merit by the Objective Review Committee (ORC) appointed by the IHS to review and make recommendations on these applications. The review will be conducted in accordance with the IHS Objective Review Guidelines. The technical review process ensures selection of quality projects in a national competition for limited funding. Applications will be evaluated and rated on the basis of the evaluation criteria listed in Section V.1. The criteria are used to evaluate the quality of a proposed project, determine the likelihood of success, and assign a numerical score to each application. The scoring of approved applications will assist the IHS in determining which proposals will be funded if the amount of TSGP funding is not sufficient to support all approved applications. Applications recommended for approval, having a score of 60 or above by the ORC and scored high enough to be considered for funding, are forwarded by the Division of Grants Operations (DGO) for cost analysis and further recommendation. The program official forwards the approval list to the IHS Director for final review and approval. Applications scoring below 60 points will be disapproved and returned to the applicant.

Note: In making final selections, the IHS Director will consider the ranking factor and the status of the applicant's single audit reports. The comments from the ORC will be advisory only. The IHS Director will make the final decision on awards.

VI. Award Administration Information

1. Award Notices

The Division of Grants Operations (DGO) will not award a grant without an approved application in conformance with regulatory and policy requirements which describes the purpose and scope of the project to be funded. When the application is approved for funding, the DGO will prepare a Notice of Award (NoA) with special terms and conditions binding upon the award and refer to all general terms applicable to the award. The NoA will serve as the official notification of a grant award and will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, and the budget period. Any other correspondence announcing to the Project Director that an application was selected is not an authorization to begin performance.

2. Administrative and National Policy Requirements

Grants are administered in accordance with the following documents:

- This grant announcement.
- Health and Human Services regulations governing Public Law 93–638 grants at 42 CFR 36.101 et seq.
- 45 CFR part 92, ''Department of Health and Human Services, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments Including Indian Tribes.''
- Public Health Service Grants Policy Statement.
- Grants Policy Directives.
- Appropriate Cost Principles: OMB Circular A–87, ''State and Local Governments.''
- OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''
- Other Applicable OMB Circulars.

3. Reporting

A. Progress Report. Program progress reports are required semi-annually. These reports will include a brief comparison of actual accomplishments to the goals established for the period, reasons for slippage (if applicable), and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Status Report. Semi-annual financial status reports must be submitted within 30 days of the end of the half year. Final financial status reports are due within 90 days of expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting. Grantees are responsible and accountable for accurate reporting of the Progress Reports and Financial Status Reports which are generally due semi-annually. Financial Status Reports (SF–269) are due 90 days after each budget period and the final SF–269 must be verified from the grantee records on how the value was derived. Grantees are allowed a reasonable period of time in which to submit financial and performance reports.

Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

VII. Agency Contact(s)

1. Questions on the programmatic and technical issues may be directed to: Mary E. Trujillo, Program Specialist. Telephone No.: 301–443–7821. Fax No.: 301–443–1050. E-mail: *metrujil@hqe.ihs.gov.*

2. Questions on grants management and fiscal matters may be directed to: Patricia Spotted Horse, Grants Management Specialist. Telephone No.: 301–443–5204. Fax No.: 301–443–9602. E-mail: *pspotted@hqe.ihs.gov.*

VIII. Other Information

The Public Health Service (PHS) strongly encourages all grant and contract recipients to provide a smoke-

free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Dated: December 7, 2005.

Robert G. McSwain,

Deputy Director, Indian Health Service.

[FR Doc. E5–7393 Filed 12–14–05; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–65]

Notice of Submission of Proposed Information Collection to OMB; Mortgagee's Request for Extension of Time Requirements

AGENCY: Office of the Chief Information Officer, HUD

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection is used as a ''turnaround'' document by mortgage lenders to request extension of time and for HUD to provide a response. For audit purposes, regulations require mortgagee's to maintain claim files for three years after a claim is paid. Information in the claim file includes copies of the HUD approval with related claim documents to verify that HUD has authorized extensions of time on specific cases.

DATES: *Comments Due Date:* January 17, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0436) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number.

Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Mortgagee's Request for Extension of Time Requirements.

OMB Approval Number: 2502–0436.

Form Numbers: HUD–50012.

Description of the Need for the Information and Its Proposed Use: This information collection is used as a ''turnaround'' document by mortgage lenders to request extension of time and for HUD to provide a response. For audit purposes, regulations require mortgagee's to maintain claim files for three years after a claim is paid. Information in the claim file includes copies of the HUD approval with related claim documents to verify that HUD has authorized extensions of time on specific cases.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	146	5		6		4,504

Total Estimated Burden Hours: 4,504.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 8, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E5–7349 Filed 12–14–05; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Performance Review Board Appointments

AGENCY: Department of the Interior.

ACTION: Notice of Performance Review Board Appointments.

SUMMARY: This notice provides the name of individuals who have been appointed to serve as members of the Department of the Interior Performance Review Board.

DATES: These appointments are effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Marilia Matos, Director, Office of Human Resources, Office of the Secretary, Department of the Interior, 1849 C Street, NW., Washington, DC 20240, Telephone Number: (202) 208–6761.

Dated: December 7, 2005.

Marilia Matos,

Director, Office of Human Resources.

2005 Performance Review Board

The following individuals have been appointed to serve on the Department of the Interior 2005 Performance Review Board:

Ethel Abeita, Director, Office of Trust Records

Kevin Adams, Assistant Director, Law Enforcement
Lauri Adams, Regional Solicitor
Martha Aikens, Program Manager
Marti Albright, Executive Director, Take Pride in America
David Allen, Regional Director, Portland
Joseph Alston, Park Manager
David Applegate, Senior Science Advisor for Earthquakes and Geologic Hazards
Carol Aten, Associate Director for Administrative Policy & Services
Maryanne Bach, Director, Research & Development
Anne Badgley, Executive Director—Regional Ecosystems Office
Karen Baker, Deputy Chief, Office of Administrative Policy & Services (Financial Management)
Keith Beartusk, Regional Director
Richard Beck, Director, Office of Planning and Performance Management
William Benjamin, Regional Director—Great Plains
Lawrence Benna, Deputy Director
John Bennett, Director Trust Program Management Center
K. Lynn Bennett, State Director
Robert A. Bennett, State Director
Edith Blackwell, Deputy Associate Solicitor—Indian Affairs
Douglas Bourgeois, Director, National Business Center
Charles Breece, Attorney-Advisor (General)
Elaine Brong, State Director
Robert Brown, Associate Director for Administration and Budget
John Buffington, Regional Director, Western Region
Brian Burns, Deputy Assistant Secretary IRM/Chief Information Officer
Carla Burzyk, Chief, Office of Budget and Performance
Chad Calvert, Deputy Assistant Secretary—Land and Minerals Management
Scott Cameron, Deputy Assistant Secretary for Performance, Accountability and Human Resources
Thomas Casadevall, Regional Director, Central Region
Dolores Chacon-Alleva, President, DOI University
Debbie Clark, Deputy Assistant Secretary—Management
Horace Clark, Regional Solicitor
David Cohen, Deputy Assistant Secretary for Insular Affairs
Robert Comer, Regional Solicitor
Anthony Conte, Regional Solicitor
Elizabeth Cordova-Harrison, Director, Management Services Office
Walter Cruickshank, Deputy Director
Elena Daly, Assistant Director, National Landscape Conservation Systems
Lucy Querques-Denett, Associate Director for Minerals Revenue Management
Douglas Domenech, Deputy Chief of Staff
Robert Doyle, Deputy Director
Matthew C. Eames, Director, Congressional and Legislative Affairs
Sharon Eller, Director, Office of Civil Rights
Donna Erwin, Principal Deputy Special Trustee
Lawrence Finfer, Deputy Director, Office of Policy Analysis
Daniel Fletcher, Associate Director for Financial Report and Systems
Art Gary, Associate Solicitor—General Law
Rick Gold, Regional Director
John Goll, Regional Director, Alaska OCS Region
Roseanne Gonzales-Schreiner, Director, Program and Policy Services
Rowan Gould, Regional Director—Anchorage
Larry Hamilton, Director, National Wildland Fire Policy and Aviation
Samuel Hamilton, Regional Director—Atlanta
Jeanette Hanna, Regional Director
James Harris, Associate Solicitor—Minerals Resources
William Hartwig, Chief, National Wildlife Refuge System
Nina Hatfield, Deputy Assistant Secretary, Business Management and Wildland Fire
Pamela Haze, Co-Director, Office of Budget
Paul Henne, Assistant Director, Budget Management and Operations
Francis Hodsoll, Deputy Director, Minerals Management Service
Paul Hoffman, Deputy Assistant Secretary—Fish and Wildlife and Parks
Matthew Hogan, Deputy Director, Fish and Wildlife Service
Wandafa Hollingsworth, Chief, Division of Budget and Program Review
Brian Holly, Chief Appraiser
H. Barry Holt, Chief Administrative Judge
Patricia Hooks, Regional Director, Southeast Region
James Hubbard, Director, Office of Wildland Fire Coordination
James Hughes, Deputy Director, Programs and Policy
Fay Iudicello, Director, Office of Executive Secretariat and Regulatory Affairs
Christopher Jarvi, Associate Director, Partnerships Interpretation & Education, Volunteers & Outdoor Recreation
Jonathan Jarvis, Regional Director, Pacific West Region
Lawrence Jensen, Regional Solicitor
Robert Johnson, Regional Director
Marshall Jones, Deputy Director
Daniel Jorjani, Chief of Staff and Counselor to the Assistant Secretary, Policy, Management and Budget
Edward Keable, Associate Solicitor, Administration
Christopher Kearney, Deputy Assistant Secretary for Policy and International Affairs
M. Franklin Keel, Regional Director
Katharine Kimball, Director, External and Intergovernmental Affairs
Suzette Kimball, Regional Director, Eastern Region
Allen Klein, Regional Director
Ernestine Kreisher, Director, Office of Communications
Robert LaBelle, Deputy Associate Director
Matthew Larsen, Chief Scientist for Hydrology
Joseph Lawler, Regional Director, National Capital Region
John Lemon, Director, National Conservation Training Center
Suzanne Lewis, Superintendent
Thomas Lonnie, Assistant Director, Minerals, Realty and Resource Protection
Jane Lyder, Legislative Counsel
Julie Mac Donald, Deputy Assistant Secretary—Fish and Wildlife and Parks
Stephen Martin, Deputy Director, Internal Management
Sue Masica, Associate Director, Park Planning, Facilities and Lands
Marilia Matos, Director, Office of Human Resources
David McCarthy, Deputy Commissioner
John McDonald, Regional Director
Thomas Melius, Assistant Director—External Affairs
Robert More, Director, Office of Hearings and Appeals
Marvin Moriarty, Regional Director
Lawrence Morrin, Regional Director
Donald Murphy, Deputy Director, National Park Service
James Nichols, Research Wildlife Biologist
Michael Nedd, State Director
Brian O'Neill, Park Manager
Michael Olsen, Counselor to the Assistant Secretary
Frederick Ore, Deputy Director, Operations
Glenda Owens, Deputy Director
Larry Parkinson, Deputy Assistant Secretary, Law Enforcement and Security
Mamie Parker, Assistant Director, Fisheries Habitat Conservation
Drue Pearce, Senior Advisor to the Secretary
Jason Peltier, Deputy Assistant Secretary—Water and Science
Lynn Peterson, Regional Solicitor
Neil Plummer, Research Hydrologist
Michael Pool, State Director
Ernest Quintana, Regional Director, Midwest Region
William Ragsdale, Director, Bureau of Indian Affairs

Thomas Readinger, Associate Director, Offshore Minerals Management
Sterling Rideout, Assistant Director—Program Support
William Rinne, Deputy Commissioner (Operations)
Kirk Rodgers, Regional Director
Linda S. C. Rundell, State Director
Carol Sampson, Associate Director for Financial Policy and Operations
Charles Sandberg, Regional Director
Paul Schmidt, Assistant Director, Migratory Birds and State Program
Denise Sheehan, Assistant Director, Budget, Planning and Human Resources
Edward Shepard, Assistant Director, Renewable Resources and Planning
Daniel Shillito, Regional Solicitor
David Smith, Deputy Assistant Secretary & Counselor to the Assistant Secretary, Fish and Wildlife and Parks
Debra Sonderman, Director, Acquisition and Property Management
Michael Soukup, Associate Director, Natural Resources
Stanley Speaks, Regional Director
Kenneth Stansell, Assistant Director, International Affairs
James Tate, Science Advisor to the Secretary
Willie Taylor, Director, Office of Environmental Policy and Compliance
Karen Taylor-Goodrich, Associate Director, Visitors & Resource Protection
Robyn Thorson, Regional Director
Whitney H. Tipton, Chief Information Officer & Director, Office of IRM
Larry Todd, Director, Security, Safety and Law Enforcement
Michael Tollefson, Superintendent
John Trezise, Co-Director, Office of Budget
George Triebsch, Associate Director for Policy
David Verhey, Associate Solicitor—Parks and Wildlife
Terrance Virden, Regional Director—Midwest
Brent Wahlquist, Regional Director
Barbara Wainman, Director, Office of Communication
R. Thomas Weimer, Senior Advisor to the Secretary
Ronald Wenker, State Director
Kathleen Wheeler, Deputy Chief Human Capital Officer
Sarah Wisely, State Director
Robert Wolf, Director, Program and Budget
Theodore Woronka, Assistant Director for Finance and Administration
Elaine Zielinski, State Director

[FR Doc. E5–7387 Filed 12–14–05; 8:45 am]
BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal—State Class III Gaming Compact.

SUMMARY: This Notice Publishes an Approval of the Fourth Amendment for the Tribal-State Compact for the Regulation of Class III Gaming between the Nooksack Indian Tribe and the State of Washington.

DATES: *Effective Date:* December 15, 2005.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of Fourth Amendment to the Tribal-State compacts for the purpose of engaging in class III gaming activities on Indian lands. This Fourth Amendment expands the number of gaming facilities that the tribe is allowed to operate and allows for electronic gaming devices. The Acting Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing notice that the Fourth Amendment to the Tribal-State compact between the Nooksack Indian Tribe and the State of Washington is hereby approved and in effect.

Dated: December 5, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E5–7394 Filed 12–14–05; 8:45 am]
BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–150–05–1120–AL]

Notice of Public Meetings, Southwest Colorado Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Southwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Southwest Colorado RAC meetings will be held January 20, 2006; March 17, 2006; May 19, 2006; July 21, 2006; and September 15, 2006.

ADDRESSES: The Southwest Colorado RAC meetings will be held January 20, 2006, at the Canyons of the Ancients National Monument Anasazi Heritage Center, located at 27501 Hwy. 184, Dolores, CO; March 17, 2006, at the BLM Uncompahgre Field Office, located at 2505 S. Townsend Ave., in Montrose, CO; May 19, 2006, at the Gunnison Community Center, 200 E. Spencer, in Gunnison, CO; July 21, 2006, at the Ouray County 4–H Event Center, 22739 Hwy. 550, in Ridgway, CO; and September 15, 2006, at the San Juan Public Lands Center, 15 Burnett Ct., Sonoran Meeting Rm., in Durango, CO.

The Southwest Colorado RAC meetings will begin at 9 a.m. and adjourn at approximately 4 p.m. Public comment periods regarding matters on the agenda will be at 2:30 p.m.

FOR FURTHER INFORMATION CONTACT: Barbara Sharrow, BLM Uncompahgre field manager, 2505 S. Townsend Ave., Montrose, CO; telephone 970–240–5300; or Melodie Lloyd, Public Affairs Specialist, 2815 H Rd., Grand Junction, CO, telephone 970–244–3097.

SUPPLEMENTARY INFORMATION: The Southwest Colorado RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues in Colorado.

Topics of discussion for all Southwest Colorado RAC meetings may include the BLM National Sage Grouse Conservation Strategy, field manager and working group reports, recreation, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, land exchange proposals, cultural resource management, and other issues as appropriate.

These meetings are open to the public. The public may present written comments to the RACs. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Dated: December 1, 2005.

Barbara Sharrow,

Uncompahgre Field Manager, Designated Federal Official for the Southwest Colorado RAC.

[FR Doc. E5–7184 Filed 12–14–05; 8:45 am]

BILLING CODE 4310–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–XZ–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held January 25, 2006 from 9:15 a.m. to 4 p.m.

ADDRESSES: Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (719) 269–8500.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Royal Gorge Field Office and San Luis Valley, Colorado. Planned agenda topics include: Manager updates on current land management issues; Arkansas River and San Luis Valley travel management planning; and resource monitoring. All meetings are open to the public. The public is encouraged to make oral comments to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting Minutes and agenda (10 days prior to each meeting) are also available at: *http://www.blm.gov/rac/co/frrac/co_fr.htm.*

Dated: December 8, 2005.

Paul Trentzsch,

Acting Royal Gorge Field Manager.

[FR Doc. E5–7374 Filed 12–14–05; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–509]

In the Matter of Certain Personal Computers, Server Computers, and Components Thereof; Notice of Commission Decision To Remand-in-Part and Vacate-in-Part an Initial Determination Finding a Violation of Section 337 of the Tariff Act of 1930; Referral of Motion to Administrative Law Judge

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to reverse the presiding administrative law judge (''ALJ'') findings in the above-captioned investigation of literal infringement with respect to the asserted claims of U.S. Patent No. 6,138,184 (''the '184 patent'') and U.S. Patent No. 5,892,976 (''the '976 patent'') and to remand the investigation to the ALJ for a determination of whether claims 7, 24, and 41 of the '184 patent and claim 9 of the '976 patent are infringed under the doctrine of equivalents, and whether a domestic industry exists as to those patents. The Commission has also determined to vacate that portion of the ID which concerns infringement of claim 1 of U.S. Patent No. 6,085,318 (''the '318 patent'') under the doctrine of equivalents. The Commission has determined to affirm the remainder of the ID. Finally, the Commission has directed the ALJ to set a new target date in the investigation and to rule on a motion filed on October 27, 2005, by respondent concerning a recently discovered license agreement related to the patents at issue in this investigation.

FOR FURTHER INFORMATION CONTACT: Rodney Maze, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be 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., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted by the Commission on June 7, 2004, based on a complaint filed by Hewlett-Packard Development Company, L.P. of Houston, Texas and Hewlett-Packard Company of Palo Alto, California (collectively ''HP''). 69 FR 31844 (June 7, 2004). The complainants alleged violations of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the importation and sale of certain personal computers, server computers, and components thereof, by reason of infringement of seven U.S. patents. The complainants named Gateway, Inc. of Poway, California (Gateway) as the only respondent. Claim 1 of U.S. Patent No. 5,737,604, claims 1, 3, 4, 6–8, 18, 20, 21, 23–25, 35, 37, 38, and 40–42 of the '184 patent, claim 9 of the '976 patent, and claim 1 of the '318 patent remain at issue in this investigation.

On May 24, 2005, the ALJ issued an ID (Order No. 45) extending the target date of the investigation by three months or until December 8, 2005. No party petitioned for review of the ID. The Commission has determined not to review this ID.

On August 8, 2005, the ALJ issued his final ID on violation and his recommended determination on remedy and bonding. The final ID incorporates by reference Order No. 15 setting forth the ALJ's construction of the claim terms at issue in this investigation. The ALJ found a violation of section 337 by reason of infringement of claims 7, 24, and 41 of the '184 patent and claim 9 of the '976 patent. He found all other asserted claims of the '184 and '976 patents to be invalid. The ALJ did not find a violation of section 337 with respect to the other two patents. Petitions for review were filed by HP, Gateway, and the Commission investigative attorney (IA) on August 18, 2005.

On August 23, 2005, the Commission issued a notice indicating that it had determined to extend the deadline for determining whether to review the final ID by 14 days, i.e., from September 22, 2005, until October 6, 2005. On August 25, 2005, all parties filed responses to

the petitions. On October 6, 2005, the Commission issued a notice indicating that it had determined to extend the deadline for determining whether to review the final ID by 8 days, i.e., from October 6, 2005, until October 14, 2005.

On October 20, 2005, the Commission issued a notice indicating that it had determined to review the final ID in its entirety. 70 FR 61157 (October 20, 2005). In connection with its review, the Commission requested written submissions on the issues under review and the issues of remedy, the public interest, and bonding. On October 27, 2005, Gateway filed a motion to stay the Commission's review of the ID and remand to the ALJ for additional findings concerning a license agreement related to the patents at issue in this investigation. On November 7, 2005, HP and the IA filed separate responses to Gateway's motion.

Having examined the record of this investigation, including the final ID and the submissions of the parties, the Commission has determined to reverse the ALJ's finding of literal infringement with respect to claims 7, 24, and 41 of the '184 patent and claim 9 of the '976 patent and to remand the investigation to the ALJ for findings concerning infringement of these claims under the doctrine of equivalents and whether the technical prong of the domestic industry requirement has been met in regard to the '184 and '976 patents. The Commission has also determined to vacate that portion of the ID which concerns infringement of claim 1 of the '318 patent under the doctrine of equivalents. The Commission has determined to affirm the remainder of the ID. The Commission has also directed the ALJ to consider and rule on Motion Docket No. 52C, filed by Gateway on October 27, 2005, which concerns a license agreement related to the patents at issue in this investigation. Finally, the Commission has directed the ALJ to extend the target date of the investigation as may be necessary to conclude the proceedings and to issue his findings on remand two months before the new target date.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.45 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.45).

Issued: December 8, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–7350 Filed 12–14–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Mechanical Engineers

Notice is hereby given that, on November 25, 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''), American Society of Mechanical Engineers (''ASME'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. 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, since July 29, 2005, ASME has published several new standards, has initiated several new standards development projects, and has initiated a new conformity assessment program, all within the general nature and scope of ASME's standards development activities, as specified in its original notification. More detail regarding these changes can be found at *http://www.asme.org.*

On September 15, 2004, ASME 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 October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on August 2, 2005. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 26, 2005 (70 FR 50406).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–24092 Filed 12–14–05; 8:45 am]

BILLING CODE 4418–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Polyurea Development Association

Notice is hereby given that, on November 21, 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''), Polyurea Development Association (''PDA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damage under specified circumstances. Specifically, PDA has added a new development activity to include a voluntary consensus standard for Polyurea/Geotextile Elastomeric Lining Systems.

On May 9, 2005, PDA 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 June 13, 2005 (70 FR 34151).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–24095 Filed 12–14–05; 8:45 am]

BILLING CODE 4418–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—USB Implementers Forum, Inc.

Notice is hereby given that, on November 23, 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''), USB Implementers Forum, Inc. (''USB–IF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: USB Implementers forum, Inc., Portland, OR. The nature and scope of USB–IF's standards development activities are: providing a support organization and forum for the advancement and adoption of USB technology, by facilitating the development of high quality compatible USB devices and promoting USB to accelerate end-user demand for USB

products through increaded public awareness of the benefits of USB and the quality of products that have passed compliance testing. These purposes include:

(i) Defining, establishing and supporting a USB-product review program, testing protocol and logo-licensing program in support of the USB Primary Specifications (as defined below) and to foster and encourage the voluntary adoption of accurate labels, tests, and specifications by developers and test houses of products and services which utilize USB;

(ii) Developing and distributing specifications and other documents that augment, enhance or extend the USB Primary Specifications for the purposes of enabling and promoting increased interoperability and reliability among USB products; provided, however, that USB–IF's purposes do not include amending or developing USB Primary Specifications (the ''USB Primary Specifications'' include the USB Specification, the On-Tghe-Go Supplement, the Wireless USB Specification, and any other USB specification that USB—IF promoter members jointly designate a ''USB Primary Specification'');

(iii) Providing a forum and environment whereby the members of the corporation may meet to review requirements for product interoperability and general usability;

(iv) Educating the business and consumer communities as to the value, benefits and applications for USB-based products through the web site, public statements, publications, tradeshow demonstrations, seminar sponsorships and other programs established by USB–IF;

(v) Protecting the needs of consumers, promoting ease of use, and increasing competition among vendors by supporting the creating and implementation of reliable, uniform, industry-standard compliance test procedures and processes which support the interoperability of USB–based products and services;

(vi) Maintaining relationships and liaison with educational institutions, government research institutes, other technology consortia, and other organizations that support and contribute to the development of specifications and standards for USB-based products; and

(vii) Fostering competition in the development of new products and services based on USB Primary Specifications, in conformance with all applicable antitrust laws and regulations.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–24093 Filed 12–14–05; 8:45 am]

BILLING CODE 4418–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. SBC Communications Inc. and AT&T Corp.; Competitive Impact Statement, Proposed Final Judgment, Complaint, Amended Stipulation

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Amended Stipulation, and Competitive Impact Statement have been filed with the U.S. District Court for the District of Columbia in *United States* v. *SBC Communications Inc.,* Civil Case No. 1:05CV02102 (EGS). On October 27, 2005, the United States filed a complaint alleging that the proposed acquisition of AT&T Corp. (''AT&T'') by SBC Communications Inc. (''SBC'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in the provision of local private lines (also called ''special access'') and other telecommunications services that rely on local private lines in eleven metropolitan areas: Chicago; Dallas-Fort Worth; Detroit; Hartford-New Haven, Connecticut; Indianapolis; Kansas City; Los Angeles; Milawaukee; San Diego; San Francisco-San Jose; and St. Louis. The proposal Final Judgment requires the defendants to divest assets in those eleven metropolitan areas in order to proceed with SBC's $16 billion acquisition of AT&T. A Competitive Impact Statement filed by the United States on November 16, 2005 describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, Amended Stipulation, Competitive Impact Statement, and all further papers filed with the Court in connection with this Complaint will be available for inspection at the Antitrust Documents Group, Antitrust Division, Liberty Place Building, Room 215, 325 7th Street, NW., Washington, DC 20503 (202–514–2481), and at the Office of the Clerk of the U.S. District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments in writing regarding the proposed consent decree to the United States. Such comments must be received by the Antitrust Division within sixty (60) days and will be filed with the Court by the United States. Comments should be addressed to Nancy Goodman, Chief, Telecommunications & Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530 (202–514–5621). At the conclusion of the sixty (60) day comment period, the U.S. District Court for the District of Columbia may enter the proposed consent decree upon finding that it serves the public interest.

J. Robert Kramer II,

Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia

United States of America, United States Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 8000, Washington, DC 20530, Plaintiff; v. SBC Communications, Inc., 175 East Houston, San Antonio, TX 78205; and AT&T Corp., One AT&T Way, Bedminster, NJ 07921, Defendants

Case Number 1:05CV02102
Judge: Emmet G. Sullivan
Deck Type: Antitrust
Date Stamp: 10/27/2005

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the merger of two of the largest providers of telecommunications services in the United States, SBC Communications, Inc. (''SBC'') and AT&T Corp. (''AT&T''), and alleges as follows:

1. On January 30, 2005, SBC entered into an agreement to acquire AT&T. If approved, the transaction would create the nation's largest provider of telecommunications services. Plaintiff seeks to enjoin this transaction because it will substantially lessen competition for (a) Local Private Lines that connect hundreds of commercial buildings in SBC's franchised territory to a carrier's network or other local destination, and (b) other telecommunications services that rely on Local Private Lines.

2. SBC and AT&T compete in the sale of wireline telecommunications services to retail and wholesale customers in the United States.

3. For hundreds of commercial buildings in the metropolitan areas of Chicago, Illinois; Dallas-Fort Worth, Texas; Detroit, Michigan; Hartford-New Haven, Connecticut; Indianapolis, Indiana; Kansas City, Missouri; Los Angeles, California; Milwaukee, Wisconsin; San Diego, California; San Francisco-San Jose, California; and St. Louis, Missouri, SBC and AT&T are the only two firms that own or control a direct wireline connection to the building. These building connections are used to supply voice and data telecommunications services to business customers. As described in this Complaint, the proposed merger is likely to substantially reduce competition for Local Private Lines and telecommunications services that rely on Local Private Lines to those buildings.

I. Jurisdiction and Venue

4. This action is filed by the United States under Section 15 of the Clayton Act, 15 U.S.C. 25, to prevent and restrain the Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

5. SBC and AT&T are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has jurisdiction over this action pursuant to Sections 15 and 16 of the Clayton Act, 15 U.S.C. 25, 26, and 28 U.S.C. 1331, 1337.

6. SBC and AT&T transact business and are found in the District of Columbia. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(c).

II. The Defendants and the Transaction

7. SBC is a corporation organized and existing under the laws of the State of Delaware, with its headquarters in San Antonio, Texas. SBC, formerly Southwestern Bell, is a regional bell operating company (''RBOC''), formed as part of the seven regional holding companies to result from the breakup of AT&T's local telephone business in 1984. In 1996, SBC acquired another of the seven original holding companies, Pacific Telesis, and in 1999 it acquired a third RBOC, Ameritech. SBC acquired another incumbent local exchange carrier (''ILEC''), Southern New England Telephone Corporation, in 1998. SBC's wireline telecommunications operations currently serve around 52 million switched access lines, including 27.5 million residential and 17.6 million business lines in 13 states. In 2004, SBC earned approximately $36.9 billion in revenues from its wireline services, including almost $13 billion attributable to business customers. SBC has fiber optic or copper connections to virtually all of the commercial buildings in its franchised territory.

8. AT&T is a corporation organized and existing under the laws of the State of New York, with its headquarters in Bedminster, New Jersey. AT&T is the nation's largest interexchange carrier (''IXC''), offering traditional long distance telephone service, as well as one of the largest competitive local exchange carriers (''CLEC''), offering local network exchange and access for voice and data services. AT&T serves consumers and businesses across the United States and around the globe, and owns significant local network assets within SBC's 13-state operating territory including direct fiber optic connections to numerous commercial buildings. In 2004, AT&T earned approximately $30.5 billion in revenues, including $22.6 billion from business customers.

9. Pursuant to an Agreement and Plan of Merger dated January 30, 2005, SBC agreed to acquire AT&T for approximately $16 billion.

III. Trade and Commerce

A. Nature of Trade and Commerce

10. SBC owns and operates local telecommunications networks throughout its territory and provides local and long distance voice and data services to, inter alia, business customers and other telecommunications carriers.

11. AT&T owns and operates local networks in dozens of metropolitan areas in the United States, a substantial number of which are in SBC territory. Like SBC, AT&T also provides local and long distance voice and data services to business customers and other telecommunications carriers. Significant numbers of AT&T's customers have locations in SBC's franchised territory, and the two firms compete to serve those wholesale and retail customers.

12. One element of the parties' local networks are local loops, sometimes referred to as ''last-mile'' connections, which are typically either copper or fiber-optic transmission facilities that connect commercial buildings to a carrier's network. These last-mile connections are a critically important asset for providing service to business customers.

13. A Local Private Line is a dedicated, point-to-point circuit offered over copper and/or fiber-optic transmission facilities that originates and terminates within a single metropolitan area and typically includes at least one local loop. Local Private Lines are sold at both retail (to business customers) and wholesale (to other carriers). SBC refers to local Private Line circuits as ''special access.''

14. Depending on how they are configured, Local Private Lines can be used to carry voice traffic, data, or a combination of the two. Local Private Lines may be purchased as stand-alone products but are also an important input to value-added voice and data telecommunications services that are offered to business customers.

15. For the vast majority of commercial buildings in its territory, SBC is the only carrier that owns a last-mile connection to the building. Thus, in order to provide voice or data telecommunications services to customers in those SBC-only buildings, competing carriers typically must lease the connection from SBC as Local Private Line service (special access).

16. For a small percentage of commercial buildings (though one that accounts for a substantial percentage of customer demand and revenue), SBC's CLEC competitors have built or acquired their own last-mile fiber-optic connections, separate from SBC's, to connect their networks to the buildings. The CLECs typically refer to buildings with these connections as their ''lit buildings'' or ''on-net buildings.'' Once a CLEC has incurred the high fixed cost to construct a last-mile connection to a building, the CLEC can usually provide service to business customers in the building at a lower marginal cost than it would otherwise be able to do if it had to lease the connection from the RBOC. It can also provide alternative access to other CLECs seeking to serve business customers in the building.

17. AT&T is among leading CLECs in SBC's territory in the number of buildings it has connected with its own last-mile fiber facilities. For hundreds of buildings in SBC's territory, the only two carriers that own or control the direct building connection are AT&T and SBC.

18. In the hundreds of buildings where AT&T is the only CLEC with a last-mile connection, the merger of SBC and AT&T would reduce the number of carriers with an owned or controlled last-mile connection from two to one.

B. Relevant Product Markets

19. The relevant product markers affected by this transaction are the markets for: (a) Local Private Lines, and (b) voice and data telecommunications services that rely on Local Private Lines.

20. SBC is the dominant provider of Local Private Lines (special access) in its franchised territory with approximately $4.4 billion in special access sales in 2004. AT&T is one of SBC's largest competitors with $311

million in Local Private Line sales in 2004, of which over $90 million were in SBC territory.

21. Local Private Lines are a recognized service category among telecommunications carriers and end-user business customers. Customers typically purchase Local Private Lines in standard bandwidth increments such as DS1 (''T1,'' 1.54 megabits per second), DS3 (44.74 megabits per second), OC3 (155.52 megabits per second), and higher. Local Private Lines can interconnect with industry-standard data networking and telephone equipment, and can be ''channelized'' to carry various amounts of voice and/or data traffic.

22. Local Private Lines are distinct from switched local exchange telephone services. Switched local exchange lines route calls through a voice switch in the local carrier's central office and do not necessarily use a dedicated circuit. These switched circuits do not offer the guaranteed bandwidth, high service levels, and security that Local Private Lines provide.

23. Competing carriers often rely on Local Private Line (special access) circuits to connect an end-user customer's location to their networks, enabling the competitor to supply value-added data networking, Internet access, local voice and long distance services to the customer. Although carriers can provide some types of voice and data services over switched local exchange lines (e.g., when an access line is pre-subscribed to a long distance carrier), most large business customers do not find those services to be a viable or cost-effective substitute for voice and data telecommunications services provided via Local Private Lines. In the event of a small, but significant, nontransitory increase in price for either Local Private Lines or voice and data telecommunications services provided via Local Private Lines, insufficient customers would switch to switched circuits to render the increase unprofitable.

C. Relevant Geographic Markets

24. The relevant geographic markets for both Local Private Lines, as well as voice and data telecommunications services that rely on Local Private Lines, are no broader than each metropolitan area and no more narrow than each individual building.

IV. Anticompetitive Effects

25. SBC and AT&T are the only two carriers that own or control a Local Private Line connection to many buildings in each region. The merger would, therefore, effectively eliminate competition for facilities-based Local Private Line service to those buildings, and many retail and wholesale customers would be longer have AT&T as a competitive alternative to SBC. Although other competitors might resell Local Private Lines from SBC, those competitors would not be as effective a competitive constraint because SBC would control the price of the resold circuits. The merged firm would, therefore, have the ability to raise price to retail and wholesale customers of Local Private Lines.

26. In addition, because the cost of dedicated local access via Local Private Line represents an important cost component of many value-added voice and data telecommunications services provided over such access, by (a) eliminating AT&T as the only competitive alternative to SBC for such services with its own Local Private Line connection to hundreds of buildings, and (b) depriving other carriers seeking to provide such value-added services of the only fully-facilities based wholesale competitive alternative to SBC in those buildings, the merger would tend to lessen competition for retail voice and data telecommunications services provided over dedicated access.

V. Entry

27. Although other CLECs can, theoretically, build their own fiber connection to each building in response to a price increase by the merged firm, such entry is a difficult, time-consuming, and expensive process. Whether a CLEC builds a last mile connection to a given building depends upon many factors, including:

a. The proximity of the building to the CLEC's existing network interconnection points;

b. The capacity required at the customer's location (and thus the revenue opportunity);

c. The availability of capital;

d. The existence of physical barriers, such as rivers and railbeds, between the CLEC's network and the customer's location; and

e. The ease or difficulty of securing the necessary consent from building owners and municipal officials.

28. The costs of building a last-mile connection vary substantially for each location. Even if all the above criteria favor the construction of a last-mile connection in a particular case, a single such connection typically costs tens, sometimes hundreds, of thousands of dollars to build and activate. Thus, CLECs will typically only build in to a particular building after they have secured a customer contract of sufficient size to justify the anticipated construction costs for that building.

29. Although entry may occur in response to a post-merger price increase in some of buildings where AT&T is the only connected CLEC, the conditions for entry are unlikely to be met in hundreds of those buildings. Thus, entry is unlikely to eliminate the competitive harm that would likely result from the proposed merger.

VI. Violation Alleged

30. The United States hereby incorporates paragraphs 1 through 29.

31. Pursuant to an Agreement and Plan of Merger dated January 30, 2005, SBC and AT&T intend to merge their businesses.

32. The effect of the proposed acquisition of AT&T by SBC would be to lessen competition substantially in interstate trade and commerce in numerous geographic markets for (a) Local Private Lines and (b) voice and data telecommunications services that rely on Local Private Lines, in violation of Section 7 of the Clayton Act, 15 U.S.C. §18.

33. The transaction would likely have the following effects, among others:

a. competition in the provision and sale of Local Private Lines in numerous geographic markets would be eliminated or substantially lessened;

b. competition in the provision and sale of voice and data telecommunications services that rely on Local Private Lines in numerous geographic markets would be substantially lessened; and

c. prices for Local Private Lines, as well as voice and data telecommunications services provided via Local Private Lines, would likely increase to levels above those that would prevail absent the merger.

VII. Prayer for Relief

The United States requests:

34. That SBC's proposed acquisition of AT&T be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

35. That Defendants be permanently enjoined and restrained from carrying out the Agreement and Plan of Merger dated January 30, 2005 or from entering into or carrying out any agreement, understanding, or plan by which SBC would merge with or acquire AT&T, its capital stock or any of its assets;

36. That the United States be awarded costs of this action; and

37. That the United States have such other relief as the Court may deem just and proper.

Dated: October 27, 2005.

Respectfully submitted,

For Plaintiff United States:
Thomas O. Barnett,
Acting Assistant Attorney General.
J. Bruce McDonald,
Deputy Assistant Attorney General.
J. Robert Krammer II,
Director of Operations.
Nancy M. Goodman,
Chief, Telecommunications and Media Enforcement Section (D.C. Bar No 251694).
Laury E. Bobbish,
Assistant Chief, Telecommunications and Media Enforcement Section.
Lawrence M. Frankel, (D.C. Bar No. 441532).
Claude F. Scott, Jr. (D.C. Bar No. 414906).
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In the United States District Court for the District of Columbia

United States of America, Plaintiff; v. SBC Communications, Inc. and AT&T Corp., Defendants

Civil Action No. 1:05CV02102 (EGS)

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on October 27, 2005, plaintiff and defendants, SBC Communications Inc. (''SBC'') and AT&T Corp. (''AT&T''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by an party regarding any issue of fact or law;

And Whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

And Whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to the United States that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it its *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''SBC'' means defendant SBC Communications Inc., a Delaware corporation with its headquarters in San Antonio, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''At&T'' means defendant AT&T Corp., a New York corporation with its headquarters in Bedminster, New Jersey, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Acquirer'' or ''Acquirers'' means the entity or entities to whom defendants divest the Divestiture Assets.

D. ''Divestiture Assets'' means IRUs for Lateral Connections to the locations listed in Appendix A and sufficient transport as described below and all additional rights necessary to enable those assets to be used by the Acquirer to provide telecommunications services. The Divestiture Assets shall include IRUs for transport facilities sufficient to connect the Lateral Connections to locations mutually agreed upon by defendants and the Acquirer, subject to the approval of the United States in its sole judgment. The term ''Divestiture Assets'' shall be construed broadly to accomplish the complete divestiture of assets and the purposes of this Final Judgment and is subject to the following:

(1) With the approval of the United States, in its sole discretion, in locations listed in Appendix A for which AT&T's interest in the fiber serving the location is an IRU rather than full ownership and if the United States determines that such an alternative disposition will meet the aims of this Final Judgment, defendants may (1) Enter into a dark fiber service agreement or other commercial arrangement for the Lateral Connections and associated transport with the Acquirer or (2) relinquish its IRU rights in the greater of (i) eight (8) fiber strands or (ii) one-half of the currently unused fiber strands in AT&T's facilities serving the locations, measured at the time of the filing of the Complaint, back to the owner of the fiber; and

(2) With the approval of the United States, in its sole discretion, and at the Acquirer's option, the Divestiture Assets may be modified to exclude assets and rights that are not necessary to meet the aims of this Final Judgment.

E. ''IRU'' means indefeasible right of use, a long-term leasehold interest that gives the holder the right to use specified strands of fiber in a telecommunications facility. An IRU granted by defendants under this Final Judgment shall (1) Be for a minimum of 10 years; (2) not require the Acquirer to pay monthly or other recurring fee to preserve or make use of its rights; (3) include all additional rights and interests necessary to enable the IRU to be used by the Acquirer to provide telecommunications services; and (4) contain other commercially reasonable and customary terms, including terms for payment to the grantor for ancillary services, such as maintenance fees on a per occurrence basis; and (5) not unreasonably limit the right of the Acquirer to use the asset as it wishes (*e.g.,* the Acquirer shall be permitted to splice into the IRU fiber, though such splice points must be mutually agreed upon by Defendants and Acquirer).

F. ''Lateral Connection'' means fiber strands from the point of entry of the building to the splice point with fiber used to serve different buildings and shall consist of the greater of (1) eight (8) fiber strands or (2) one-half of the currently unused fiber strands in AT&T's facilities serving the building measured at the time of the filing of the complaint. The fiber strands may be provided from those owned or controlled by either SBC or AT&T, as mutually agreed by defendants and Acquirer.

III. Applicability

A. This Final Judgment applies to SBC and AT&T, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, that the purchasers agree to be bound by the

provisions of this Final Judgment, provided, however, that defendants need to obtain such an agreement from the Acquirers.

IV. Divestitures

A. Defendants are ordered and directed, within 120 calendar days after the closing of SBC's acquisition of AT&T, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an acquirer and on terms acceptable to the United States in its sole discretion. The United States , in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) days in total, and shall notify the Court in such circumstances. If approval or consent from any government unit is necessary with respect to divestiture of the Divestiture Assets by defendants or the Divestiture Trustee and if applications or requests for approval or consent have been filed with the appropriate governmental unit within 120 calendar days after the closing of SBC's acquisition of AT&T, but an order or other dispositive action on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of those Divestiture Assets for which governmental approval or consent has not been issued until five (5) days after such approval or consent is received. Defendants agree to use their best efforts to divest the Divestiture Assets and to seek all necessary regulatory or other approvals or consents necessary for such divestitures as expeditiously as possible. This Final Judgment does not limit the Federal Communications Commission's exercise of its regulatory powers and process with respect to the Divestiture Assets. Authorization by the Federal Communications Commission to conduct the divestiture of a Divestiture Asset in a particular manner will not modify any of the requirements of this decree.

B. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

D. Defendants shall warrant to all Acquirers of the Divestiture Assets that each asset will be operation on the date of sale.

E. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

F. At the option of the Acquirers, defendants shall enter into a contract for a period of up to one (1) year for transition services customarily necessary to maintain, operate, provision, monitor, or otherwise support the Divestiture Assets. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions.

G. Defendants shall warrant to the Acquirer of the Divestiture Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

H. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing telecommunications business. Divestiture of the Divestiture Assets may be made to more than one Acquirer, provided that (i) all Divestiture Assets in a given metropolitan area are divested to a single Acquirer unless otherwise approved by the United States, in its sole discretion, and (ii) in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to an Acquirer (or Acquirers) that, in the United State's sole judgment, has the intent and capability (including the necessary managerial, operation, technical, and financial capability) of competing effectively in the provision of telecommunications services; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer (or Acquirers) and defendants gives defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquier's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

I. To the extent leases, contracts, agreements, intellectual property rights, licenses, or other commitments with third-parties are not assignable or transferrable without the consent of the licensor or other third parties, defendants shall use their best efforts to obtain those consents.

V. Appointment of Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing, specifically identifying the Divestiture Assets that have not been divested. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustees shall have the power and authority to accomplish the divestiture to Acquirers acceptable to the United States, in its sole judgment, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, technical experts, or other agents, who shall be solely accountable to the trustee,

reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures, including their best efforts to effect all necessary regulatory or other approvals or consents and will provide necessary representations or warranties as appropriate, related to the sale of the Divestiture Assets. The trustee and any consultants, accountants, attorneys, technical experts, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities related to the Divestiture Assets, and defendants shall develop financial and other information relevant to the Divestiture Assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

H. In addition, notwithstanding any provision to the contrary, the United States, in its sole discretion, may require defendants to include additional assets, or allow, with the written approval of the United States, defendants to substitute substantially similar assets, which substantially relate to the Divestiture Assets to be divested by the trustee to facilitate prompt divestiture to an acceptable Acquirer or Acquirers.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer or Acquirers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer or Acquirers, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer or Acquirers, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the prosed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Preservation of Assets

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Stipulation signed by defendants and the United States. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the face and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty

(30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of the receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at plaintiff's option, to require that defendants provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subejct to claim of protection under rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other then grand jury proceedings).

XI. No Reacquisition

Defendants may not reacquire (or lease back without the approval of the United States, in its sole discretion) any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' response to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date:

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge

APPENDIX A

Address	City	State	Zip	Metropolitan Area
Renaissance Blvd	Oakbrook Terrace	IL	60181	Chicago.
10 N Martingale Rd	Schaumburg	IL	60173	Chicago.
10024 Skokie Blvd	Skokie	IL	60077	Chicago.
11 S La Salle St	Chicago	IL	60603	Chicago.
1400 Waukegan Rd	McGaw Park	IL	60085	Chicago.
1666 E Touhy Ave	Des Plaines	IL	60018	Chicago.
200 Wilmot Rd	Deerfield	IL	60015	Chicago.
2300 60th St	Kenosha	WI	53140	Chicago.
2320 N Kenmore Ave	Chicago	IL	60614	Chicago.
243 S Wabash Ave	Chicago	IL	60604	Chicago.
26 W 171 Roosevelt Rd	Wheaton	IL	60187	Chicago.

APPENDIX A—Continued

Address	City	State	Zip	Metropolitan Area
2801 80th St	Kenosha	WI	53140	Chicago.
3050 Highland Pkwy	Downers Grove	IL	60515	Chicago.
3060 W Salt Creek Ln	Arlington Heights	IL	60005	Chicago.
340 N Milwaukee Ave	Vernon Hills	IL	60061	Chicago.
50 S La Salle St	Chicago	IL	60603	Chicago.
600 N Rte 45	Libertyville	IL	60048	Chicago.
610 S Canal St	Chicago	IL	60607	Chicago.
610 S Maple Ave	Oak Park	IL	60304	Chicago.
640 N La Salle Dr	Chicago	IL	60610	Chicago.
7000 High Grove Blvd	Burr Ridge	IL	60521	Chicago.
770 N Halsted St	Chicago	IL	60622	Chicago.
7955 S Cass Ave	Darien	IL	60561	Chicago.
9700 S Cass Ave	Argonne	IL	60439	Chicago.
10935 Estate Ln	Dallas	TX	75238	Dallas-Fort Worth.
1145 Empire Central Pl	Dallas	TX	75247	Dallas-Fort Worth.
1233 Regal Row	Dallas	TX	75247	Dallas-Fort Worth.
12750 Merit Dr	Dallas	TX	75251	Dallas-Fort Worth.
12800 Abrams Rd	Dallas	TX	75243	Dallas-Fort Worth.
1330 River Bend Rd	Dallas	TX	75247	Dallas-Fort Worth.
13510 N Central Expy	Dallas	TX	75243	Dallas-Fort Worth.
13536 N Central Expy	Dallas	TX	75243	Dallas-Fort Worth.
13725 Montfort Dr	Dallas	TX	75240	Dallas-Fort Worth.
1508 E Mockingbird Ln	Dallas	TX	75214	Dallas-Fort Worth.
1701 N Greenville Ave	Richardson	TX	75081	Dallas-Fort Worth.
1900 S Central Expy	Dallas	TX	75215	Dallas-Fort Worth.
2220 Campbell Creek Blvd	Richardson	TX	75082	Dallas-Fort Worth.
2280 Greenville Ave	Dallas	TX	75206	Dallas-Fort Worth.
2534 Royal Ln	Dallas	TX	75229	Dallas-Fort Worth.
2735 N Stemmons Freeway	Dallas	TX	75207	Dallas-Fort Worth.
3890 W Northwest Hwy	Dallas	TX	75220	Dallas-Fort Worth.
3911 Sthwy 12 Loop	Dallas	TX	75236	Dallas-Fort Worth.
3939 Valley View	Farmers Branch	TX	75244	Dallas-Fort Worth.
4001 Airport Frwy Rt #59	For Worth	TX	76117	Dallas-Fort Worth.
4201 Spring Valley Rd	Dallas	TX	75244	Dallas-Fort Worth.
4849 W Illinois	Dallas	TX	75211	Dallas-Fort Worth.
6011 Lemmon Ave	Dallas	TX	75209	Dallas-Fort Worth.
7517 Campbell Rd	Dallas	TX	75248	Dallas-Fort Worth.
7834 C F Hawn Fwy	Dallas	TX	75217	Dallas-Fort Worth.
7920 Belt Line Rd	Dallas	TX	75254	Dallas-Fort Worth.
801 Main St	Dallas	TX	75202	Dallas-Fort Worth.
12225 Stephens Rd	Warren	MI	48089	Detroit-Ann Arbor.
12345 Nine Mile	Warren	MI	48090	Detroit-Ann Arbor.
1235 E Big Beaver Rd	Troy	MI	48083	Detroit-Ann Arbor.
18101 Oakwood Blvd	Dearborn	MI	48120	Detroit-Ann Arbor.
20 Oak Hollow St	Southfield	MI	48034	Detroit-Ann Arbor.
201 W Fort St	Detroit	MI	48226	Detroit-Ann Arbor.
2050 Auburn Rd	Auburn Hills	MI	48326	Detroit-Ann Arbor.
25400 Denso	Southfield	MI	48034	Detroit-Ann Arbor.
26400 Southfield Rd	Lathrup Village	MI	48076	Detroit-Ann Arbor.
26600 Telegraph Rd	Southfield	MI	48034	Detroit-Ann Arbor.
27500 Drake Rd	Farmington Hills	MI	48331	Detroit-Ann Arbor.
29129 Ecorse Rd	Romulus	MI	48174	Detroit-Ann Arbor.
32991 Hamilton Ct E	Farmington Hills	MI	48334	Detroit-Ann Arbor.
3800 Howard Rd	Farmington Hills	MI	48331	Detroit-Ann Arbor.
38281 Schoolcraft Rd	Livonia	MI	48150	Detroit-Ann Arbor.
3937 Campus Dr	Pontiac	MI	48341	Detroit-Ann Arbor.
40 Oak Hollow St	Southfield	MI	48034	Detroit-Ann Arbor.
500 Griswold St	Detroit	MI	48236	Detroit-Ann Arbor.
500 Kirts Rd	Troy	MI	48088	Detroit-Ann Arbor.
500 Renaissance Ctr	Detroit	MI	48243	Detroit-Ann Arbor.
911 W Big Beaver Rd	Troy	MI	48084	Detroit-Ann Arbor.
1 Atlantic St	Bridgeport	CT	06604	Hartford-New-Haven.
10 Univac Ln	Windsor	CT	06095	Hartford-New-Haven.
102 Addison Rd	Windsor	CT	06095	Hartford-New-Haven.
121 Wawarme St	Hartford	CT	06114	Hartford-New-Haven.
125 Powder Forest Dr	Simsbury	CT	06089	Hartford-New-Haven.
199 Benson Rd	Middlebury	CT	06762	Hartford-New-Haven.
20 Old Windsor Rd	Bloomfield	CT	06002	Hartford-New-Haven.
200 Grove St	New Haven	CT	06511	Hartford-New-Haven.
2000 Day Hill Rd	Windsor	CT	06095	Hartford-New-Haven.
3 Waterside Xing	Windsor	CT	06095	Hartford-New-Haven.
300 Kensington Ave	New Britain	CT	06051	Hartford-New-Haven.

APPENDIX A—Continued

Address	City	State	Zip	Metropolitan Area
32 Valley St	Bristol	CT	06010	Hartford-New-Haven.
45 Glover Ave	Norwalk	CT	06850	Hartford-New-Haven.
500 Day Hill Rd	Windsor	CT	06095	Hartford-New-Haven.
550 Marshall Phelps Rd	Windsor	CT	06095	Hartford-New-Haven.
7 Waterside Xing	Windsor	CT	06095	Hartford-New-Haven.
71 Deerfield Ln	Meriden	CT	06450	Hartford-New-Haven.
11313 US Pkwy	Fishers	IN	46038	Indianapolis.
1481 W 10th St	Indianapolis	IN	46202	Indianapolis.
1600 Albany St	Beech Grove	IN	46107	Indianapolis.
1800 N Meridian St	Indianapolis	IN	46202	Indianapolis.
200 W 103rd St	Indianapolis	IN	46280	Indianapolis.
250N Shadeland Ave	Indianapolis	IN	46219	Indianapolis.
302 S State Ave	Indianapolis	IN	46201	Indianapolis.
307 Sthwy 37	Indianapolis	IN	46204	Indianapolis.
3120 N Post Rd	Indianapolis	IN	46226	Indianapolis.
3210 E 96th St	Carmel	IN	46240	Indianapolis.
3266 N Meridian St	Indianapolis	IN	46208	Indianapolis.
3308 N Mitthoeffer Rd	Indianapolis	IN	46236	Indianapolis.
402 Kentucky Ave	Indianapolis	IN	46225	Indianapolis.
4550 Victory Ln	Indianapolis	IN	46203	Indianapolis.
46 E Ohio St	Indianapolis	IN	46204	Indianapolis.
4880 Century Plaza Rd	Indianapolis	IN	46254	Indianapolis.
4919 W 78th St	Indianapolis	IN	46268	Indianapolis.
5000 W 86th St	Indianapolis	IN	46268	Indianapolis.
5380 W 81St	Indianapolis	IN	46268	Indianapolis.
5520 W 76th St	Indianapolis	IN	46204	Indianapolis.
5804 Churchman Byp	Beech Grove	IN	46203	Indianapolis.
5940 W Raymond St	Indianapolis	IN	46241	Indianapolis.
6270 Corporate Dr	Indianapolis	IN	46278	Indianapolis.
6612 E 75th St	Indianapolis	IN	46250	Indianapolis.
6640 Parkdale Pl	Indianapolis	IN	45254	Indianapolis.
6666 E 75th St	Indianapolis	IN	46250	Indianapolis.
6810 N Shadeland Ave	Indianapolis	IN	46220	Indianapolis.
6850 Parkdale Pl	Indianapolis	IN	46254	Indianapolis.
700 W 16th St	Indianapolis	IN	46202	Indianapolis.
7240 Shadeland Station Way	Indianapolis	IN	46256	Indianapolis.
7301 Woodland Dr	Indianapolis	IN	46278	Indianapolis.
7444 Shadeland Station Way	Indianapolis	IN	46256	Indianapolis.
7445 Company Dr	Indianapolis	IN	46237	Indianapolis.
755 E Main St	Greenwood	IN	46143	Indianapolis.
8101 Clearvista Pkwy	Indianapolis	IN	46256	Indianapolis.
8111 S Emerson Ave	Indianapolis		46237	Indianapolis.
8320 Allison Point Trl	Indianapolis	IN	46250	Indianapolis.
8450 Northwest Blvd	Indianapolis	IN	46278	Indianapolis.
8555 River Rd	Indianapolis	IN	46240	Indianapolis.
8600 Allisonville Rd	Indianapolis	IN	46250	Indianapolis.
8600 Roberts Dr N	Fishers	IN	46038	Indianapolis.
8650 Commerce Park Pl	Indianapolis	IN	46268	Indianapolis.
8677 Logo 7 Ct	Indianapolis	IN	46219	Indianapolis.
8802 N Meridan St	Indianapolis	IN	46260	Indianapolis.
8820 S Meridan St	Indianapolis	IN	46217	Indianapolis.
8868 E 56th St	Indianapolis	IN	46216	Indianapolis.
8940 Vincennes Cir	Indianapolis	IN	46268	Indianapolis.
9100 Purdue Rd	Indianapolis	IN	46268	Indianapolis.
941 N Meridan St	Indianapolis	IN	46204	Indianapolis.
9601 E 21st St	Indianapolis	IN	46229	Indianapolis.
9650 E Washington St	Indianapolis	IN	46229	Indianapolis.
9660 E Washington St	Indianapolis	IN	46229	Indianapolis.
9704 Beaumont Rd	Ft. Benjamin Harrison	IN	46216	Indianapolis.
1 Royal Way	Kansas City	MO	64129	Kansas City.
1 Ward Pkwy	Kansas City	MO	64112	Kansas City.
1000 Carondelet Dr	Kansas City	MO	64114	Kansas City.
1000 Walnut St	Kansas City	MO	64106	Kansas City.
10236 Marion Park Dr	Kansas City	MO	64137	Kansas City.
104 W 42nd St	Kansas City	MO	64105	Kansas City.
10500 Barkley St	Overland Park	KS	66212	Kansas City.
10525 N Ambassador Dr	Kansas City	MO	64153	Kansas City.
10561 Barkley St	Overland Park	KS	66212	Kansas City.
10910 W 87th St	Lenexa	KS	66214	Kansas City.
10930 N Pomona St	Kansas City	MO	64153	Kansas City.
1100 Rockhurst Rd	Kansas City	MO	64110	Kansas City.
11020 N Ambassador Dr	Kansas City	MO	64152	Kansas City.

APPENDIX A—Continued

Address	City	State	Zip	Metropolitan Area
112 W 9th St	Kansas City	MO	64105	Kansas City.
11221 Roe Ave	Leawood	KS	66211	Kansas City.
11401 Lamar	Overland Park	KS	66211	Kansas City.
11600 College Blvd	Overland Park	KS	66103	Kansas City.
12076 W Santa Fe Dr	Lenexa	KS	66215	Kansas City.
12851 Foster St	Overland Park	KS	66213	Kansas City.
12900 Foster St	Overland Park	KS	66213	Kansas City.
1300 Cherry	Kansas City	MO	64106	Kansas City.
1300 Summit St	Kansas City	MO	64105	Kansas City.
13202 W 98th St	Lenexa	KS	66215	Kansas City.
1414 Genessee St	Kansas City	MO	64102	Kansas City.
14303 W 95th St	Lenexa	KS	66215	Kansas City.
14502 W 105th St	Lenexa	KS	66215	Kansas City.
1500 Meadow Lake Pkwy	Kansas City	MO	64114	Kansas City.
15095 W 116th St	Olathe	KS	66062	Kansas City.
1524 N Corrington Ave	Kansas City	MO	64120	Kansas City.
15940 111th Blvd	Lenexa	KS	66219	Kansas City.
16011 College Blvd	Lenexa	KS	66215	Kansas City.
1616 N Corrington	Kansas City	MO	64120	Kansas City.
1801 Main St	Kansas City	MO	64108	Kansas City.
1828 Walnut St	Kansas City	MO	64108	Kansas City.
1900 W 47th Pl	Kansas City	KS	66106	Kansas City.
1901 W 47	Westwood	KS	66205	Kansas City.
1925 Baltimore Ave	Kansas City	MO	64108	Kansas City.
1925 Central	Kansas City	MO	64108	Kansas City.
2 Brush Creek Blvd	Kansas City	MO	64112	Kansas City.
20 W 9th St	Kansas City	MO	64105	Kansas City.
2000 County	Kansas City	KS	66106	Kansas City.
2000 Shawnee Mission Pkwy	Mission Woods	KS	66205	Kansas City.
210 W 10th St	Kansas City	MO	64105	Kansas City.
2400/2401 Gillham Rd	Kansas City	MO	64110	Kansas City.
2501 McGee	Kansas City	MO	64108	Kansas City.
3130 Broadway St	Kansas City	MO	64111	Kansas City.
323 W 8th	Kansas City	MO	64105	Kansas City.
3420 Broadway Rd	Kansas City	MO	64111	Kansas City.
3900 Rainbow Blvd	Kansas City	KS	66103	Kansas City.
400 E 9th St	Kansas City	MO	64106	Kansas City.
4739 Belleview Ave	Kansas City	MO	64112	Kansas City.
4800 Main St	Kansas City	Mo	64112	Kansas City.
5121 E Front St	Kansas City	MO	64120	Kansas City.
5700 Broadmoor St	Mission	KS	66202	Kansas City.
5750 W 95th St	Overland Park	KS	66207	Kansas City.
5808 W 110th St	Overland Park	KS	66211	Kansas City.
601 E 12th Ave	North Kansas City	MO	64116	Kansas City.
6201 College Blvd	Overland Park	KS	66211	Kansas City.
6300 Lamar Ave	Overland Park	KS	66202	Kansas City.
6407 Roanridge	Kansas City	MO	64151	Kansas City.
6900 Squibb Rd	Mission	KS	66202	Kansas City.
6950 Squibb Rd	Mission	KS	66202	Kansas City.
7015 College Blvd	Overland Park	KS	66211	Kansas City.
7045 College Blvd	Overland park	KS	66211	Kansas City.
7223 W 95th St	Overland Park	KS	66212	Kansas City.
7300 College Blvd	Overland Park	KS	66210	Kansas City.
7400 College Blvd	Overland Park	KS	66210	Kansas City.
7401 W 129th St	Overland Park	KS	66213	Kansas City.
7401 NW Tiffany Springs Pkwy	Kansas City	MO	64153	Kansas City.
7500 College Blvd	Overland Park	KS	66210	Kansas City.
7800 W 110th St	Overland Park	KS	66210	Kansas City.
7950 College Blvd	Overland Park	KS	66210	Kansas City.
801 Walnut St	Kansas City	MO	64106	Kansas City.
8101 Lenexa Dr	Lenxa	KS	66214	Kansas City.
818 Grand Blvd	Kansas City	MO	64106	Kansas City.
8228 Flagor Ave	Kansas City	MO	64118	Kansas City.
8281 NW 107 St	Kansas City	MO	64153	Kansas City.
8300 College Blvd	Overland Park	KS	66210	Kansas City.
8320 Ward Pkwy	Kansas City	MO	64114	Kansas City.
8400 NW 107th Ter	Kansas City	MO	64153	Kansas City.
8425 Quivira	Lenaxa	KS	66215	Kansas City.
8700 State Line Rd	Leawood	KS	66206	Kansas City.
8900 State Line Rd	Kansas City	KS	66103	Kansas City.
9219 Quivira Rd	Overland Park	KS	66215	Kansas City.
9435 Holmes Rd	Kansas City	MO	64131	Kansas City.

APPENDIX A—Continued

Address	City	State	Zip	Metropolitan Area
9700 Commerce Pkwy	Lenexa	KS	66219	Kansas City.
1 MacArthur Pl	Santa Ana	CA	92707	Los Angeles-Riverside-Orange County.
1149 S Broadway St	Los Angeles	CA	90015	Los Angeles-Riverside-Orange County.
1375 Sunflower Ave	Costa Mesa	CA	92626	Los Angeles-Riverside-Orange County.
1615 N Lake Ave	Pasadena	CA	91104	Los Angeles-Riverside-Orange County.
17682 Cowan Ave	Irvine	CA	92614	Los Angeles-Riverside-Orange County.
1830 E Warner Ave	Santa Ana	CA	92705	Los Angeles-Riverside-Orange County.
1901 W Malvern Ave	Fullerton	CA	92833	Los Angeles-Riverside-Orange County.
2049 Century Park E	Los Angeles	CA	90067	Los Angeles-Riverside-Orange County.
2060 E Imperial Hwy	El Segundo	CA	90245	Los Angeles-Riverside-Orange County.
2100 E Grand Ave	El Segundo	CA	90245	Los Angeles-Riverside-Orange County.
21300 Victory Blvd	Los Angeles	CA	91367	Los Angeles-Riverside-Orange County.
21550 Oxnard St	Los Angeles	CA	91367	Los Angeles-Riverside-Orange County.
21600 Oxnard St	Los Angeles	CA	91367	Los Angeles-Riverside-Orange County.
21650 Oxnard St	Los Angeles	CA	91367	Los Angeles-Riverside-Orange County.
21700 Oxnard St	Los Angeles	CA	91367	Los Angeles-Riverside-Orange County.
2230 E Imperial Hwy	El Segundo	CA	90245	Los Angeles-Riverside-Orange County.
2260 E Imperial Hwy	El Segundo	CA	90245	Los Angeles-Riverside-Orange County.
27700 Medical Center Rd	Mission Viejo	CA	92691	Los Angeles-Riverside-Orange County.
333 S Anita Dr	Orange	CA	92868	Los Angeles-Riverside-Orange County.
3440 Flair Dr	El Monte	CA	91731	Los Angeles-Riverside-Orange County.
3530 Wilshire Blvd	Los Angeles	CA	90010	Los Angeles-Riverside-Orange County.
376 Valencia Ave	Brea	CA	92823	Los Angeles-Riverside-Orange County.
5230 Pacific Concourse Dr	Del Aire	CA	90045	Los Angeles-Riverside-Orange County.
550 Continental	El Segundo	CA	90245	Los Angeles-Riverside-Orange County.
5800 W Sunset Blvd	Los Angeles	CA	90028	Los Angeles-Riverside-Orange County.
5901 De Soto Ave	Woodland Hills	CA	91364	Los Angeles-Riverside-Orange County.
601 W 5th St	Los Angeles	CA	90017	Los Angeles-Riverside-Orange County.
610 Newport Ctr Dr	Newport Beach	CA	92660	Los Angeles-Riverside-Orange County.
620 Newport Ctr Dr	Newport Beach	CA	92660	Los Angeles-Riverside-Orange County.
6300 Canoga Ave	Los Angeles	CA	91367	Los Angeles-Riverside-Orange County.
6320 Canoga Ave	Los Angeles	CA	91367	Los Angeles-Riverside-Orange County.
660 Newport Ctr Dr	Newport Beach	CA	92660	Los Angeles-Riverside-Orange County.
7001 S Central Ave	Los Angeles	CA	90052	Los Angeles-Riverside-Orange County.
800 N State College Blvd	Fullerton	CA	92831	Los Angeles-Riverside-Orange County.
830 N La Brea Ave	Los Angeles	CA	90038	Los Angeles-Riverside-Orange County.
950 S Grand Ave	Los Angeles	CA	90015	Los Angeles-Riverside-Orange County.
10920 W Lincoln Ave	West Allis	WI	53227	Milwaukee.
11200 W Parkland Ave	Milwaukee	WI	53224	Milwaukee.
1126 S 70th St	Milwaukee	WI	53214	Milwaukee.
11270 W Park Pl	Milwaukee	WI	53224	Milwaukee.
11300 W Burleigh St	Wauwatosa	WI	53222	Milwaukee.
1190 W Rawson Ave	Oak Creek	WI	53154	Milwaukee.
12000 W Park Pl	Milwaukee	WI	53224	Milwaukee.
1233 N Mayfair Rd	Wauwatosa	WI	53226	Milwaukee.
1563 S 101	West Allis	WI	53214	Milwaukee.
15740 W Cleveland Ave	New Berlin	WI	53151	Milwaukee.
18500 W Corporate Dr	Brookfield	WI	53045	Milwaukee.
1912 S 82nd St	West Allis	WI	53219	Milwaukee.
230 W Wells St	Milwaukee	WI	53203	Milwaukee.
2861 S James Dr	New Berlin	WI	53151	Milwaukee.
432 E Kilbourn Ave	Milwaukee	WI	53202	Milwaukee.
433 E Michigan St	Milwaukee	WI	53202	Milwaukee.
4701 W Greenfield Ave	West Milwaukee	WI	53214	Milwaukee.
507 E Michigan St	Milwaukee	WI	53202	Milwaukee.
5151 W State St	Milwaukee	WI	53208	Milwaukee.
525 N 6th St	Milwaukee	WI	53203	Milwaukee.
5300 Sthwy 38	Milwaukee	WI	53207	Milwaukee.
5315 S 3rd St	Milwaukee	WI	53207	Milwaukee.
555 Air Cargo Way	Milwaukee	WI	53207	Milwaukee.
600 E Greenfield Ave	Milwaukee	WI	53204	Milwaukee.
635 S 28th St	Milwaukee	WI	53215	Milwaukee.
6801 N Yates Rd	Fox Point	WI	53217	Milwaukee.
6980 N Port Washington Rd	Milwaukee	WI	53217	Milwaukee.
7930 N Faulkner Rd	Milwaukee	WI	53224	Milwaukee.
800 W Wells St	Milwaukee	WI	53233	Milwaukee.
8112 W Bluemound Rd	Wauwatosa	WI	53213	Milwaukee.
8213 Durand Ave	Sturtevant	WI	53177	Milwaukee.
8332 Corporate Dr	Racine	WI	53406	Milwaukee.
8900 N Arbon Dr	Brown Deer	WI	53223	Milwaukee.
9015 W Maple St	West Allis	WI	53214	Milwaukee.
9201 Washington Ave	Sturtevant	WI	53406	Milwaukee.

APPENDIX A—Continued

Address	City	State	Zip	Metropolitan Area
N16 W234155 Stoneridge Dr	Waukesha	WI	53186	Milwaukee.
N19 W24133 Riverwood Dr	Pewaukee	WI	53072	Milwaukee.
N56 W17000 Ridgewood Dr	Menomonee Falls	WI	53051	Milwaukee.
101 Civic Centre Dr	Santee	CA	92071	San Diego.
10505 Sorrento Valley Rd	San Diego	CA	92121	San Diego.
10666 N Torrey Pines Rd	San Diego	CA	92037	San Diego.
1120 27th St	San Diego	CA	92154	San Diego.
11355 North Torrey Pines Rd	San Diego	CA	92037	San Diego.
12365 Crosthwaite Cir	Poway	CA	92064	San Diego.
12650 Danielson Ct	Poway	CA	92064	San Diego.
1849 Diamond St	San Marcos	CA	92069	San Diego.
1940 Diamond St	San Marcos	CA	92069	San Diego.
1950 Corporate Ctr	Oceanside	CA	92056	San Diego.
2251 San Diego Ave	San Diego	CA	92110	San Diego.
3111 Camino Del Rio N	San Diego	CA	92108	San Diego.
3115 Merryfield Row	San Diego	CA	92121	San Diego.
3131 Camino Del Rio North	San Diego	CA	92108	San Diego.
330 Lewis St	San Diego	CA	92103	San Diego.
333 W Harbor Dr	San Diego	CA	92131	San Diego.
3380 Norman Scott Rd	San Diego	CA	92136	San Diego.
3851 Rosecrans St	San Diego	CA	92110	San Diego.
3900 Lomaland Dr	San Diego	CA	92106	San Diego.
4077 5th Ave	San Diego	CA	92103	San Diego.
4310 Landis St	San Diego	CA	92105	San Diego.
435 H St	Chula Vista	CA	91910	San Diego.
5055 Viewridge Ave	San Diego	CA	92123	San Diego.
5555 Overland Ave	San Diego	CA	92123	San Diego.
5601 Oberlin Dr	San Diego	CA	92121	San Diego.
5670 Oberlin Dr	San Diego	CA	92121	San Diego.
5754 Pacific Center Blvd	San Diego	CA	92121	San Diego.
5880 Oberlin Dr	San Diego	CA	92121	San Diego.
6150 Nancy Ridge Dr	San Diego	CA	92121	San Diego.
8355 Aero Dr	San Diego	CA	92123	San Diego.
8520 Tech Way	San Diego	CA	92123	San Diego.
9089 Clairemont Mesa Blvd	San Diego	CA	92123	San Diego.
9233 Balbora Ave	San Diego	CA	92123	San Diego.
9888 Genesee Ave	San Diego	CA	92117	San Diego.
9950 Barnes Canyon Rd	San Diego	CA	92121	San Diego.
Naval Air Station	San Diego	CA	92135	San Diego.
1025 2nd Ave	Oakland	CA	94606	San Francisco-Oakland-San Jose.
221 Main St	San Francisco	CA	94105	San Francisco-Oakland-San Jose.
2325 Orchard Pkwy	San Jose	CA	95131	San Francisco-Oakland-San Jose.
245 Market St	San Francisco	CA	94105	San Francisco-Oakland-San Jose.
4665 Business Center Dr	Fairfield	CA	94585	San Francisco-Oakland-San Jose.
5858 Horton St	Emeryville	CA	94608	San Francisco-Oakland-San Jose.
601 Montgomery St	San Francisco	CA	94111	San Francisco-Oakland-San Jose.
650 California St	San Francisco	CA	94108	San Francisco-Oakland-San Jose.
717 Potter St	Berkeley	CA	94710	San Francisco-Oakland-San Jose.
720 Parker St	Berkeley	CA	94710	San Francisco-Oakland-San Jose.
75 E Trimble Rd	San Jose	Ca	95131	San Francisco-Oakland-San Jose.
10101 Woodfield	Creve Coeur	MO	63132	St. Louis.
10401 Baur Blvd	Olivette	MO	63132	St. Louis.
10430 Baur Blvd	Olivette	MO	63132	St. Louis.
10845 Baur	Creve Coeur	MO	63132	St. Louis.
1100 Eastport Plaza Dr	Collinsville	IL	62234	St. Louis.
1111 Woods Mill	St. Louis	MO	63011	St. Louis.
11330 Olive Blvd	St. Louis	MO	63141	St. Louis.
11700 Dunlap Industrial Dr	Maryland Heights	MO	63043	St. Louis.
11975 Westline Industrial Dr	Maryland Heights	MO	63146	St. Louis.
12312 Olive Blvd	Creve Coeur	MO	63141	St. Louis.
13045 Tesson Ferry Rd	Tesson Ferry	MO	63128	St. Louis.
14440 S Outer Forty Rd	Town and County	MO	63141	St. Louis.
14515 N Outer Rd	Chesterfield	MO	63017	St. Louis.
14528 S Outer 40 Rd	Chesterfield	MO	63017	St. Louis.
1699 S Hanley Rd	Brentwood	MO	63144	St. Louis.
1706 Washington Ave	St. Louis	MO	63103	St. Louis.
1850 Borman Ct	Maryland Heights	MO	63146	St. Louis.
1945 Craig Rd	Maryland Heights	MO	63141	St. Louis.
210 N 13th St	St. Louis	MO	63103	St. Louis.
2100 Schuetz Rd	Maryland Heights	MO	63146	St. Louis.
232 S Woods Mill Rd	Chesterfield	MO	63017	St. Louis.
25 Research Ct	Weldon Spring	MO	63304	St. Louis.

APPENDIX A—Continued

Address	City	State	Zip	Metropolitan Area
2600 Washington	St. Louis	MO	63103	St. Louis.
305 Rock Industrial Park Dr	Bridgeton	MO	63044	St. Louis.
3635 Vista @ Grand Blvd	St. Louis	MO	63110	St. Louis.
41 Village Square Dr	St. Louis	MO	63042	St. Louis.
424 S Woods Mill Rd	Town and Country	MO	63017	St. Louis.
425 S Woods Mill Rd	Chesterfield	MO	63017	St. Louis.
525 Couch Ave	Kirkwood	MO	63122	St. Louis.
600 Mason Ridge Center Dr	Town and Country	MO	63141	St. Louis.
8 Park Pl	Swansea	IL	62226	St. Louis.
8020 Forsyth Blvd	Clayton	MO	63105	St. Louis.
900 N Tucker Blvd	St. Louis	MO	63101	St. Louis.
Bldg P–5	Scott Air Force Base	IL	62225	St. Louis.

In the United States District Court for the District of Columbia

United States of America, Plaintiff v.*SBC Communications Inc.* and *AT&T Corp., Defendants*

Civil Action No. 1:05CV02102 (EGS)
Filed: November 16, 2005

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2 (b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendants entered into an Agreement and Plan of Merger dated January 30, 2005, pursuant to which SBC Communications Inc. (''SBC'') will acquire AT&T Corp. (''AT&T''). The United States filed a civil antitrust Complaint on October 27, 2005 seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially for Local Private Lines and other telecommunications services that rely on Local Private Lines located in 11 metropolitan areas in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition would result in customers facing higher prices for Local Private Lines and other telecommunications services that rely on Local Private Lines than they would absent the merger.

At the same time the Complaint was filed, the United States filed a Stipulation and proposed Final Judgment that are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest, in most situations, indefeasible rights of use (''IRUs'') for lateral connections to certain buildings located in a number of metropolitan areas as listed in Appendix A of the proposed Final Judgment (collectively the ''Divestiture Assets''). Under the terms of the Stipulation, Defendants will take certain steps to ensure that these assets are preserved and maintained.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. Defendants have also stipulated that they will comply with the terms of the Stipulation and the proposed Final Judgment from the date of signing of the Stipulation, pending entry of the proposed Final Judgment by the Court and the required divestitures. Should the Court decline to enter the proposed Final Judgment, Defendants have also committe to continue to abide by its requirements and those of the Stipulation until the expiration of time for appeal.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

SBC is a corporation organized and existing under the laws of the State of Delaware, with its headquarters in San Antonio, Texas. SBC, formerly Southwestern Bell, is a regional bell operation company (''RBOC''), formed as one of the seven regional holding companies created as a result of the breakup of AT&T's telephone business into local and long distance components initially in 1984. Since then, SBC has acquired two other RBOCs—Pacific Telsis and Ameritech—as well as an incumbent local exchange carrier (''ILEC''), Southern New England Telephone Corporation. SBC owns and operates local telecommunications networks throughout is 13-state territory and provides local and long distance voice and data services to, inter alia, business customers and other telecommunications carriers. SBC's wireline telecommunications operations currently serve around 52 million switched access lines, including 27.5 million residential and 17.6 million business lines. In 2004, SBC earned approximately $36.9 billion in revenues from its wireline services, including almost $13 million attributable to business customers.

AT&T is a corporation organized and existing under the laws of the State of New York, with its headquarters in Bedminsiter, New Jersey. After the 1984 breakup, AT&T was primarily a long distance provider and is still the nation's largest interexchange carrier (''IXC''), offering traditional long distance telephone service, as well as one of the largest competitive local exchange carriers (''CLEC''), offering local network access for voice and data services. AT&T serves consumers and businesses across the United States and around the globe. It also owns and operates local networks in dozens of metropolitan areas in the United States, a substantial number of which are in SBC territory. Like SBC, AT&T also provides local and long distance voice and data services to business customers and other telecommunications carriers. AT&T competes with SBC to serve wholesale and retail customers' locations in SBC's franchised territory. IN 2004, AT&T earned approximately $30.5 billion in revenues, including $22.6 billion from business customers.

Pursuant to an Agreement and Plan of Merger dated January 30, 2005, SBC agreed to acquire AT&T for approximately $16 billion. The proposed transaction, as initially agreed to by Defendants, would lessen

competition substantially for Local Private Lines and other telecommunication services that rely on Local Private Lines in 11 metropolitan areas. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States.

B. Local Private Lines

A Local Private Line is a dedicated, point-to-point circuit offered over copper and/or fiber-optic transmission facilities that originates and terminates within a single metropolitan area and typically includes at least one local loop. A local loop, sometimes referred to as a ''last-mile'' connection, is typically either a copper or fiber-optic transmission facility that connects commercial buildings to a carrier's network, making the local loop a critically important asset for providing telecommunications services to business customers.

Local Private Lines are a recognized service category among telecommunications carriers and end-user business customers and are sold at both retail (to business customers) and wholesale (to other carriers). Depending on how they are configured, Local Private Lines can be used to carry voice traffic, data, or a combination of the two. Local Private Lines may be purchased as stand-alone products but are also an important input to value-added voice and data telecommunications services for business customers and represent a significant portion of the costs incurred in providing those services. Customers typically purchase Local Private Lines in standard bandwidth increments such as DS1 (''T1,'' 1.54 megabits per second), DS3 (44.74 megabits per second), OC3 (155.52 megabits per second), and higher. Local Private Lines can interconnect with industry-standard data networking and telephone equipment, and can be ''channelized'' to carry various amounts of voice and/or data traffic. Local Private Lines are distinct from switched local exchange telephone servicers, which route calls through a voice switch in the local carrier's central office and do not necessarily use a dedicated circuit. customers do not consider switched local exchange services to be a substitute because they do not offer the guaranteed bandwidth, high service levels, and security that Local Private Lines provide.

Competing carriers often rely on Local Private Line circuits to connect an end-user customer's location to their networks, enabling the competitor to supply value-added data networking, Internet access, local voice and long distance services to the customer. although carriers can provide some types of voice and data services over switched local exchange lines (e.g., when an access line is pre-subscribed to a long distance carrier), most large business customers do not find those services to be a viable or cost-effective substitute for voice and data telecommunications services provided via Local Private Lines or voice and data telecommunications services provided via Local Private Lines, insufficient customers would switch to switched circuits to render the increase unprofitable.

For the vast majority of commercial buildings in its territory, SBC is the only carrier that owns a last-mile connection to the building. Thus, in order to provide Local Private Line circuits or voice or data telecommunications services to customers in those SBC-only buildings, competing carriers typically must lease the connection from SBC as Local Private Line service, which SBC refers to as ''special access.'' For a small percentage of commercial buildings (though these buildings account for a significant amount of customer demand and revenue), SBC's CLEC competitors have built or acquired their own last-mile fiber-optic connections, separate from SBC's, to connect their networks to the buildings. The CLECs typically refer to buildings with these connections as their ''lit buildings'' or ''on-net buildings.'' Once a CLEC has incurred the high fixed cost to construct a last-mile connection to a building, the CLEC can usually provide service to business customers in the building at a lower marginal cost than it would otherwise be able to do if it had to lease the connection from the RBOC. It an also provide alternative access to other CLECs seeking to service business customers in the building.

The relevant geographic market for both Local Private Lines, as well as voice and data telecommunications services that rely on Local Private Lines, is no broader than each metropolitan area and no more narrow than each individual building.

C. The Competitive Effects of the Transaction on Local Private Lines

SBC's acquisition of AT&T will substantially lessen competition in the markets for (a) Local Private Lines and (b) voice and data telecommunications services that rely on Local Private Lines. SBC is the dominant provider of Local Private Lines in its franchised territory, and AT&T is one of its largest competitors. AT&T is among the leading CLECs in SBC's territory in the number of buildings it has connected with its own last-mile fiber facilities. For hundreds of commercial buildings located in the metropolitan areas of Chicago, Illinois; Dallas-Fort Worth, Texas; Detroit, Michigan; Hartford-New Haven, Connecticut; Indianapolis, Indiana; Kansas City, Missouri; Los Angeles, California; Milwaukee, Wisconsin; San Diego, California; San Francisco-San Jose, California; and St. Louis, Missouri, SBC and AT&T are the only two firms that own or control a direct wireline connection to the building. In these buildings, the merger of SBC and AT&T would reduce the number of carriers with an owned or controlled last-mile connection from two to one.

The merger would, therefore, effectively eliminate competition for facilities-based Local Private Line service to those buildings, and many retail and wholesale customers would no longer have AT&T as a competitive alternative to SBC. Although other competitors might resell Local Private Lines from SBC, those competitors would not be as effective a competitive constraint because SBC would control the price of the resold circuits. The merged firm would, therefore, have the ability to raise price to retail and wholesale customers of Local Private Lines. In addition, because the cost of dedicated local access via Local Private Lines represents an important cost component of many value-added voice and data telecommunications services provided over such access, the merger would tend to lessen competition for retail voice and data telecommunications services provided over dedicated access by (a) eliminating AT&T as the only competitive alternative to SBC for such services with its own Local Private Line connection to hundreds of buildings and (b) depriving other carriers seeking to provide such value-added network services of the only fully-facilities based wholesale competitive alternative to SBC in those buildings.

Although other CLECs can, theoretically, build their own fiber connection to each building in response to a price increase by the merged firm, such entry is a difficult, time-consuming, and expensive process. Whether a CLEC builds a last-mile connection to a given building depends upon many factors, as noted in the Complaint, and the costs of building a last-mile fiber-optic connection vary substantially for each location. Because a single such connection may cost hundreds of thousands of dollars to build and light, CLECs will typically only build in to a particular building after they have secured a customer

contract of sufficient size and length to justify the anticipated construction costs for that building. While entry may occur in some buildings where AT&T is the only CLEC present in response to a post-merger price increase, the conditions for entry are unlikely to be met in the hundreds of buildings that are the subject to the Complaint. For these buildings, the expected customer demand and proximity of other CLEC fiber to the building (two important factors in the decision to build in) indicate that such entry, even in the face of a price increase, is unlikely to be profitable for any CLEC. Thus, entry would not be timely, likely, or sufficient to eliminate the competitive harm that would likely result from SBC's proposed acquisition of AT&T.

For these seasons, the United States concluded that SBC's proposed acquisition of AT&T will likely substantially lessen competition, in violation of Section 7 of the Clayton Act, in the provision of Local Private Lines and other telecommunications services that rely on Local Private Lines in the 11 metropolitan areas listed above.

III. Explanation of the Proposed Final Judgment

The divestiture requirements of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition of Local Private Lines and other telecommunications services that rely on Local Private Lines in the relevant areas. The proposed Final Judgment requires Defendants, within 120 days after the closing of SBC's acquisition of AT&T, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the Divestiture Assets. The Divestiture Assets consist of IRUs for lateral connections (or last-mile connection) to hundreds of buildings in the identified metropolitan areas along with transport facilities sufficient to enable the IRUs to be used by the purchaser to provide telecommunications services. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

These assets must be divested in such a way as to satisfy the United States in its sole discretion that they will be used by the purchaser to compete effectively and remedy the harm alleged in the Complaint in the markets for Local Private Lines and other telecommunications services that rely on Local Private Lines. In reviewing the purchaser or purchasers of the Divestiture Assets, the United States will be particularly focused on the purchaser's ability to be a viable competitor in offering Local Private Lines on both a retail and/or wholesale basis. Purchasers that are already offering similar services in or near the metropolitan area are more likely to be viable competitors than other potential purchasers.

Divesting the last-mile connections to the hundreds of buildings in SBC's territory will remedy the harm alleged in the Complaint. Although other CLEC's have local fiber networks in each of the metropolitan areas at issue, they cover only a small percentage of buildings, and the buildings covered vary from CLEC and CLEC. As a result, there are numerous buildings where AT&T is the only CLEC with a last-mile connection. It is the decreased competition in the provision of these last-mile connections to buildings where AT&T is the only CLEC that creates the harm alleged in the Complaint. Whether the geographic market for the sale of Local Private Line or other telecommunications services that rely on Local Private Lines is as broad as the metropolitan area or as narrow as individual locations or building, divesting these last-mile connections will restore the lost facilities-based competition. The proposed Final Judgment also strengthens metropolitan area competition by divesting to a single purchaser in each area all of the buildings that were unique to AT&T.

To ensure that the purchaser has adequate capacity to serve customers in a given location, the lateral or last-mile connection to be divested will consist of an IRU for the grater of (1) eight (8) fiber strands or (2) one-half of the currently unused fiber strands in AT&T's facilities serving the building measured at the time of the filing of the Complaint, from the point of entry of the building to the splice point with fiber used to serve different buildings. This should be sufficient capacity for the purchaser to serve current demand and allow for future growth and changes in the local service area while allowing SBC to retain the AT&T circuits being used to serve current customers without disruption to their service. In addition, to accommodate network engineering and design requirements, the divestiture IRUs can be granted for fiber strands owned or controlled by either SBC or AT&T, as mutually agreed by Defendants and the purchaser.

Last-mile connections, however, are of little use if they are not connected to a network. Therefore, the proposed Final Judgment also requires the divestiture of IRUs for transport facilities sufficient to connect the divested last-mile connections to locations mutually agreed upon by Defendants and the purchaser. This will ensure that the purchaser can connect the last-mile connections to its network facilities and provide both Local Private Lines and any other telecommunications services that rely on Local Private Lines that a customer in the building may require.

An IRU (or indefeasible right of use) is a long-term leasehold interest commonly used in the telecommunications industry that gives the holder the right to use specified strands of fiber in a telecommunications facility. The proposed Final Judgment contemplates that the purchaser and Defendants will negotiate commercially reasonable IRUs that must meet minimum requirements, including: (1) To ensure that the purchaser has the asset for a long enough time period to serve customers while taking into account the dynamic nature of the telecommunications industry and the useful life of the existing fiber, the IRU must be for a minimum of 10 years; (2) to minimize ongoing carrying costs for the IRU, the IRU cannot contain a monthly or other recurring fee; and (3) to ensure that Defendants cannot limit the purchasers' use of the last-mile connection, the IRU cannot unreasonably limit the right of the purchaser to use the asset as it wishes (e.g., the purchaser shall be permitted to splice into the IRU fiber, though such splice points must be mutually agreed upon by Defendants and purchaser). This last requirement, allows the purchaser to splice into the IRUs to serve locations other than those listed in Appendix A of the proposed Final Judgment, at mutually agreed upon splice points.

The requirements of the proposed Final Judgment ensure that the purchasers can use the Divested Assets to begin competing immediately for customers in these buildings and will have the rights and cost structure necessary to be effective by (1) minimizing carrying costs so that viability is not threatened if customers are not immediately procured and (2) giving the purchaser flexibility in use of the last-mile connections by allowing splicing into the fiber.

In some locations, AT&T serves the building using fiber that it controls through an IRU, rather than full ownership. In these locations if the United States determines in its sole discretion that such an alternative disposition will meet the aims of the proposed Final Judgment, Defendants may alternatively (1) enter into a dark

fiber service agreement or other commercial arrangement for the last-mile connections and, if necessary, associated transport with the purchaser or (2) relinquish a portion of AT&T's IRU rights back to the owner of the fiber. In either of these circumstances, as with approving a purchaser, the United States will consider whether the fiber is likely to be used it in a manner that will remedy the competitive harm alleged in the Complaint.

Lastly, with the approval of the United States, in its sole discretion, and at the purchaser's option, the Divestiture Assets may be modified to exclude assets and rights that are not necessary to meet the aims of this Final Judgment. This will allow for minor modifications of the Divestiture Assets to exclude assets that may not be necessary in order to remedy the competitive harm.

A. Timing of Divestitures

To rapidly restore lost competition, the United States requires divestitures to be completed within the shortest time period reasonable under the circumstances. In this case, the proposed Final Judgment requires, in Section IV.A, divestiture of the Divestiture Assets, within 120 days after the closing of SBC's acquisition of AT&T, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later. The United States in its sole discretion may extend the date for divestiture of the Divestiture Assets by up to sixty (60) days. The divestiture timing provisions of the proposed Final Judgment will ensure that the divestitures are carried out in a timely manner, and at the same time will permit Defendants an adequate opportunity to accomplish the divestitures through a fair and orderly process.

B. Use of a Divestiture Trustee

In the event that Defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures. To ensure that the divestiture trustee can promptly locate and divest to an acceptable purchaser, the United States, in its sole discretion, may require Defendants to include additional assets, or allow Defendants to substitute substantially similar assets, which substantially relate the Divestiture Assets to be divested by the divestiture trustee.

The proposed Final Judgment provides that Defendants will pay all costs and expenses of the divestiture trustee. The divestiture trustee's commission will be structured, under Section V.D of the proposed Final Judgment, so as to provide an incentive for the divestiture trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the divestiture trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestitures. Section V.G of the proposed Final Judgment requires the divestiture trustee to divest the Divestiture Assets to an acceptable purchaser or purchasers no later than six (6) months after his or her appointment. At the end of six (6) months, if all divestitures have not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or term of the trustee's appointment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the Untied States has not withdrawn its consent. The APA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Nancy M. Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530. The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against SBC's acquisition of AT&T. The United States is satisfied, however, that the divestiture of assets and other relief described in the proposed Final Judgment will preserve competition for Local Private Lines and other telecommunications services that rely on Local Private Lines in the metropolitan areas identified in the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the Court shall consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the

violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trail.

15 U.S.C. § 16(e)(1)(A) & (B). As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the consent judgment is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the consent judgment may positively harm third parties. See *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

''Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). Thus, in conducting this inquiry, ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).[1]

Rather:

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cass. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); see also *Microsoft,* 56 F.3d at 1460–62. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *AT&T Corp.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette,* 406 F. Supp. at 716), aff'd sub nom. *Maryland* v. *United States*, 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp 619, 622 (W.D. Ky. 1985) (approving the consent judgment even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. Id. at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: November 16, 2005.

Respectfully submitted,

/s/

Laury E. Bobbish,
Assistant Chief.

/s/

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Verizon Communications Inc. and MCI, Inc.; Competitive Impact Statement, Proposed Final Judgment, Complaint, Stipulation

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the U.S. District Court for the District of Columbia in *United States* v. *Verizon Communications Inc.,* Civil Case No. 1:05CV02103 (HHK). On October 27, 2005, the United States filed a complaint alleging that the proposed acquisition of MCI, Inc. (''MCI'') by Verizon Communications Inc. (''Verizon'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, by substantially lessening competition in the provision of locally private lines (also called ''special access'') and other

[1] See *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer ''whether the settlement achieved [was] within the reaches of the public interest''). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed by the Department of Justice pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93–1463, 93d Cong., 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538–39.

[2] Cf. BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *Gillette,* 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); see generally *Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

telecommunications services that rely on local private lines in eight metropolitan areas: Baltimore; Boston; New York; Philadelphia; Tampa; Richmond, Virginia; Providence, Rhode Island; and Portland, Maine. The proposed Final Judgment requires the defendants to divest assets in those eight metropolitan areas in order to proceed with Verizon's $8.54 billion acquisition of MCI. A Competitive Impact Statement filed by the United States on November 16, 2005 describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, Stipulation, Competitive Impact Statement, and all further papers filed with the Court in connection with this Complaint will be available for inspection at the Antitrust Documents Group, Antitrust Division, Liberty Place Building, Room 215, 325 7th Street, NW., Washington, DC 20530 (202–514–4281), and at the Office of the Clerk of the U.S. District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments in writing regarding the proposed consent decree to the United States. Such comments must be received by the Antitrust Division within sixty (60) days and will be filed with the Court by the United States. Comments should be addressed to Nancy Goodman, Chief, Telecommunications & Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530 (202–514–5621). At the conclusion of the sixty (60) day comment period, the U.S. District Court for the District of Columbia may enter the proposed consent decree upon finding that it serves the public interest.

J. Robert Kramer II,

Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia

United States of America, United States Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 8000, Washington, DC 20530, Plaintiff, v. Verizon Communications Inc., 1095 Avenue of the Americas, New York, NY 10036; and MCI, Inc., 22001 Loudoun County Parkway, Ashburn, VA 20147, Defendants

Civil Action No. _____
CASE NUMBER 1:05CV02103
JUDGE: Henry H. Kennedy
DECK TYPE: Antitrust
DATE STAMP: 10/27/2005

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the merger of two of the largest providers of telecommunications services in the United States, Verizon Communications, Inc. (''Verizon'') and MCI, Inc. (''MCI''), and alleges as follows:

1. On February 14, 2005, Verizon entered into an agreement to acquire MCI. If approved, the transaction would create one of the nation's largest providers of telecommunications services. Plaintiff seeks to enjoin this transaction because it will substantially lessen competition for (a) Local Private Lines that connect hundreds of commercial buildings in Verizon's franchised territory to a carrier's network or other local destination, and (b) other telecommunications services that rely on Local Private Lines.

2. Verizon and MCI compete in the sale of wireline telecommunications services to retail and wholesale customers in the United States.

3. For hundreds of commercial buildings in the metropolitan areas of Baltimore-Washington, DC; Boston, Massachusetts; New York, New York; Richmond, Virginia; Providence, Rhode Island; Tampa, Florida; Philadelphia, Pennsylvania; and Portland, Maine, Verizon and MCI are the only two firms that own or control a direct wireline connection to the building. These building connections are used to supply voice and data telecommunications services to business customers. As described in this Complaint, the proposed merger is likely to substantially reduce competition for Local Private Lines and telecommunications services that rely on Local Private Lines to those buildings.

I. Jurisdiction and Venue

4. This action is filed by the United States under Section 15 of the Clayton Act, 15 U.S.C. 25, to prevent and restrain the Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

5. Verizon and MCI are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has jurisdiction over this action pursuant to Sections 15 and 16 of the Clayton Act, 15 U.S.C. 25, 26, and 28 U.S.C. 1331, 1337.

6. Verizon and MCI transact business and are found in the District of Columbia. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(c).

II. The Defendants and the Transaction

7. Verizon is a corporation organized and existing under the laws of the State of Delaware, with its headquarters in New York, New York. Verizon, formerly Bell Atlantic Corporation (''Bell Atlantic''), is the nation's largest regional Bell operating company (''RBOC''). Bell Atlantic was one of the seven regional holding companies to result from the breakup of AT&T's local telephone business in 1984. In 1996 Bell Atlantic acquired another of the seven original holding companies, NYNEX Corporation. In 2000 Bell Atlantic acquired GTE Corporation, an incumbent local exchange carrier (''ILEC'') that provided local exchange and other serivces in 28 states, and formed Verizon. Today, Verizon's wireline telecommunications operations serve about 51 million total switched access lines, including 32.4 million residential and 17.8 million business lines, in 29 states plus the District of Columbia. In 2004, Verizon earned approximately $38.6 billion in revenues from its domestic wireline services, including at least $8.8 billion in revenue from business customers. Verizon has fiber optic or copper connections to virtually all of the commercial buildings in its franchised territory.

8. MCI is a corporation organized and existing under the laws of the State of Delaware, with its headquarters in Ashburn, Virginia, MCI is one of the nation's largest interexchange carriers (''IXC''), offering traditional long distance telephone service, as well as one of the largest competitive local exchange carriers (''CLEC''), offering local network exchange and access for voice and data services. MCI serves consumers and businesses across the United States and around the globe, and owns significant local network assets within Verizon's 29-state operating territory including direct fiber optic connections to numerous commercial buildings. In 2004, MCI earned approximately $20.7 billion in revenues, including almost $4 billion from domestic business customers.

9. Pursuant to an Agreement and Plan of Merger dated February 14, 2005, as amended on March 4, March 29, and May 2, 2005, Verizon agreed to acquire MCI for approximately $8.54 billion.

III. Trade and Commerce

A. Nature of Trade and Commerce

10. Verizon owns and operates local telecommunications networks throughout its territory and provides local and long distance voice and data services to, inter alia, business customers and other telecommunications carriers.

11. MCI owns and operates local networks in dozens of metropolitan areas in the United States, a substantial number of which are in Verizon territory. Like Verizon, MCI also provides local and long distance voice and data services to business customers and other telecommunications carriers. Significant numbers of MCI's customers have locations in Verizon's franchised territory, and the two firms compete to serve those wholesale and retail customers.

12. One element of the parties' local networks are local loops, sometimes referred to as ''last-mile'' connections, which are typically either copper or fiber-optic transmission facilities that connect commercial buildings to a carrier's network. These last-mile connections are a critically important asset for providing service to business customers.

13. A Local Private Line is a dedicated, point-to-point circuit offered over copper and/or fiber-optic transmission facilities that originates and terminates within a single metropolitan area and typically includes at least one local loop. Local Private Lines are sold at both retail (to business customers) and wholesale (to other carriers). Verizon refers to Local Private Line circuits as ''special access,'' and MCI refers to its own such circuits as ''metro private lines.''

14. Depending on how they are configured, Local Private Lines can be used to carry voice traffic, data, or a combination of the two. Local Private Lines may be purchased as stand-alone products but are also an important input to value-added voice and data telecommunications services that are offered to business customers.

15. For the vast majority of commercial buildings in its territory, Verizon is the only carrier that owns a last-mile connection to the building. Thus, in order to provide voice or data telecommunications services to customers in those Verizon-only buildings, competing carriers typically must lease the connection from Verizon as Local Private Line service (special access).

16. For a small percentage of commercial buildings (though one that accounts for a substantial percentage of customer demand and revenue), Verizon's CLEC competitors have built or acquired their own last-mile fiber-optic connections, separate from Verizon's, to connect their networks to the buildings. The CLECs typically refer to buildings with these connections as their ''lit buildings'' or ''on-net buildings.'' Once a CLEC has incurred the high fixed cost to construct a last-mile connection to a building, the CLEC can usually provide service to business customers in the building at a lower marginal cost than it would otherwise be able to do if it had to lease the connection from the RBOC. It can also provide alternative access to other CLECs seeking to serve business customers in the building.

17. MCI is among the leading CLECs in Verizon's territory in the number of buildings it has connected with its own last-mile fiber facilities. For hundreds of buildings in Verizon's territory, the only two carriers that own or control the direct building connection are MCI and Verizon.

18. In the hundreds of buildings where MCI is the only CLEC with a last-mile connection, the merge of MCI and Verizon would reduce the number of carriers with an owned or controlled last-mile connection from two to one.

B. Relevant Product Markets

19. The relevant product markets affected by this transaction are the markets for: (a) Local Private Lines, and (b) voice and data telecommunications services that rely on Local Private Lines.

20. Verizon is the dominant provider of Local Private Lines (special access) in its franchised territory with $3.5 billion in special access sales in 2004. MCI is one of Verizon's largest competitors with $532 million in metro private line sales in 2004, of which more than $198 million were in Verizon territory.

21. Local Private Lines are a recognized service category among telecommunications carriers and end-user business customers. Customers typically purchase Local Private Lines in standard bandwidth increments such as DS1 (''T1,'' 1.54 megabits per second), DS3 (44.74 megabits per second), OC3 (155.52 megabits per second), and higher. Local Private Lines can interconnect with industry-standard data networking and telephone equipment, and can be ''channelized'' to carry various amounts of voice and/or data traffic.

22. Local Private Lines are distinct from switched local exchange telephone services. Switched local exchange lines route calls through a voice switch in the local carrier's central office and do not necessarily use a dedicated circuit. These switched circuits do not offer the guaranteed bandwidth, high service levels, and security that Local Private Lines provide.

23. Competing carriers often rely on Local Private Line (special access) circuits to connect an end-user customer's location to their networks, enabling the competitor to supply value-added data networking, Internet access, local voice and long distance services to the customer. Although carriers can provide some types of voice and data services over switched local exchange lines (e.g., when an access line is pre-subscribed to a long distance carrier), most large business customers do not find those services to be a viable or cost-effective substitute for voice and data telecommunications services provided via Local Private Lines. In the event of a small, but significant, nontransitory increase in price for either Local Private Lines or voice and data telecommunications services provided via Local Private Lines, insufficient customers would switch to switched circuits to render the increase unprofitable.

C. Relevant Geographic Markets

24. The relevant geographic markets for both Local Private Lines, as well as voice and data telecommunications services that rely on Local Private Lines, are no broader than each metropolitan area and no more narrow than each individual building.

IV. Anticompetitive Effects

25. Verizon and MCI are the only two carriers that own or control a Local Private Line connection to many buildings in each region. The merger would, therefore, effectively eliminate competition for facilities-based Local Private Line service to those buildings, and many retail and wholesale customers would no longer have MCI as a competitive alternative to Verizon. Although other competitors might resell Local Private Lines from Verizon, those competitors would not be as effective a competitive constraint because Verizon would control the price of the resold circuits. The merged firm would, therefore, have the ability to raise price to retail and wholesale customers of Local Private Lines.

26. In addition, because the cost of dedicated local access via Local Private Line represents an important cost component of many value-added voice and data telecommunications services provided over such access, by (a) eliminating MCI as the only competitive alternative to Verizon for such services with its own Local Private Line connection to hundreds of buildings,

and (b) depriving other carriers seeking to provide such value-added services of the only fully-facilities based wholesale competitive alternative to Verizon in those buildings, the merger would tend to lessen competition for retail voice and data telecommunications services provided over dedicated access.

V. Entry

27. Although other CLECs can, theoretically, build their own fiber connection to each building in response to a price increase by the merged firm, such entry is a difficult, time-consuming, and expensive process. Whether a CLEC builds a last mile connection to a given building depends upon many factors, including:

a. The proximity of the building to the CLEC's existing network interconnection points;

b. The capacity required at the customer's location (and thus the revenue opportunity);

c. The availability of capital;

d. The existence of physical barriers, such as rivers and railbeds, between the CLEC's network and the customer's location; and

e. The ease or difficulty of securing the necessary consent from building owners and municipal officials.

28. The costs of building a last-mile connection vary substantially for each location. Even if all the above criteria favor the construction of a last-mile connection in a particular case, a single such connection typically costs tens, sometimes hundreds, of thousands of dollars to build and activate. Thus, CLECs will typically only build in to a particular building after they have secured a customer contract of sufficient size to justify the anticipated construction costs for that building.

29. Although entry may occur in response to a post-merger price increase in some of the buildings where MCI is the only connected CLEC, the conditions for entry are unlikely to be met in hundreds of those buildings. Thus, entry is unlikely to eliminate the competitive harm that would likely result from the proposed merger.

VI. Violation Alleged

30. The United States hereby incorporates paragraphs 1 through 29.

31. Pursuant to an Agreement and Plan of Merger dated February 14, 2005, as amended on March 4, March 29, and May 2, 2005 Verizon and MCI intend to merge their businesses.

32. The effect of the proposed acquisition of MCI by Verizon would be to lessen competition substantially in interstate trade and commerce in numerous geographic markets for (a) Local Private Lines and (b) voice and data telecommunications services that rely on Local Private Lines, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

33. The transaction would likely have the following effects, among others:

a. Competition in the provision and sale of Local Private Lines in numerous Geographic markets would be eliminated or substantially lessened;

b. Competition in the provision and sale of voice and data telecommunications services that rely on Local Private Lines in numerous geographic markets would be substantially lessened; and

c. Prices for Local Private Lines, as well as voice and data telecommunications services provided via Local Private Lines, would likely increase to levels above those that would prevail absent the merger.

VII. Prayer for Relief

The United States requests:

34. That Verizon's proposed acquisition of MCI be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

35. That Defendants be permanently enjoined and restrained from carrying out the Agreement and Plan of Merger, dated February 14, 2005, as amended on March 4, March 29, and May 2, 2005 or from entering into or carrying out any agreement, understanding, or plan by which Verizon would merge with or acquire MCI, its capital stock or any of its assets;

36. That the United States be awarded costs of this action; and

37. That the United States have such other relief as the Court may deem just and proper.

Dated: October 27, 2005.

Respectfully submitted,

For Plaintiff United States:

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Acting Assistant Attorney General.

J. Bruce McDonald,
Deputy Assistant Attorney General.

J. Robert Kramer II,
Director of Operations.

Nancy M. Goodman,
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In the United States District Court for the District of Columbia

United States of America, Plaintiff; v. Verizon Communications Inc. and MCI, Inc., Defendants

Civil Action No. 1:05CV02103 (HHK)

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on October 27, 2005, plaintiff and defendants, Verizon Communications Inc. (''Verizon'') and MCI, Inc. (''MCI''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

And Whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to the United States that the divestitures required below can and will be made and the defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

New Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon cosnet of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Verizon'' means defendant Verizon Communications Inc., a Delaware corporation with its headquarters in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''MCI'' means defendants MCI, Inc., a Delaware corporation with its headquarters in Ashburn, Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnership and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Acquirer'' or ''Acquirers'' means the entity or entities to whom defendants divest the Divestiture Assets.

D. ''Divestiture Assets'' means IRUs for Lateral Connections to the locations listed in Appendix A and sufficient transport as described below and all additional rights necessary to enable those asets to be used by the Acquirer to provide telecommunications services. The Divestiture Assets shall include IRUs for transport facilities sufficient to connect the Lateral Connections to locations mutually agreed upon by defendants and the Acquirer, subject to the approval of the United States in its sole judgment. the term ''Divestiture Assets'' shall be construed broadly to accomplish the complete divestiture of assets and the purposes of this Final Judgment. With the approval of the United States, in its sole discretion, and at the Acquirer's option, the Divestiture Assets may be modified to exlude assets and rights that are not necessary to meet the competitive aims of this Final Judgment.

E. ''IRU'' means indefeasible right of use, a long-term leasehold interest that gives the holder the right to use specified strands of fiber in a telecommunications facility. An IRU granted by defendants under this Final Judgment shall (1) be for a minimum of 10 years; (2) not require the Acquirer to pay a monthly or other recurring fee to preserve or make use of its rights; (3) include all additional rights and interests necessary to enable the IRU to be used by the Acquirer to provide telecommunications services; and (4) contain other commercially reasonable and customary terms, including terms for payment to the grantor for ancillary services, such as maintenance fees on a per occurrence basis; and (5) not unreasonably limit the right of the Acquirer to use the asset as it wishes (e.g., the Acquirer shall be permitted to splice into the IRU fiber, though such splice points must be mutually agreed upon by defendants and Acquirer).

F. ''Lateral Connection'' means fiber strands from the point of entry of the building to the splice point with fiber used to serve different buildings and shall consist of the greater of (1) eight (8) fiber strands or (2) one-half of the currently unused fiber strands in MCI's facilities serving the building measured at the time of the filing of the Complaint. The fiber strands may be provided from those owned or controlled by either Verizon or MCI, as mutually agreed by defendants and Acquirer.

III. Applicability

A. This Final Judgment applies to Verizon and MCI, as defined above, and all other person in active concern or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, that the purchasers agree to be bound by the provisions of this Final Judgment, provided however, that defendants need not obtain such an agreement from the Acquirers.

IV. Divestitures

A. Defendants are ordered and directed, within 120 calendar days after the closing of Verizon's acquisition of MCI, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an acquirer and on terms acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) days in total, and shall notify the Court in such circumstances. If approval or consent from any government unit is necessary with respect to divestiture of the Divestiture Assets by defendants or the Divestiture Trustee and if applications or requests for approval or consent have been filed with the appropriate governmental unit within 120 calendar days after the closing of Verizon's acquisition of MCI, but an order or other dispositive action on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of those Divestiture Assets for which governmental approval or consent has not been issued until five (5) days after such approval or consent is received. Defendants agree to use their best efforts to divest the Divestiture Assets and to seek all necessary regulatory or other approvals or consents necessary for such divestitures as expeditiously as possible. This Final Judgment odes not limit the Federal Communications Commission's exercise of its regulatory powers and process with respect to the Divestiture Assets. Authorization by the Federal Communications Commission to conduct the divestiture of a Divestiture Asset in a particularly manner will not modify any of the requirements of this decree.

B. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

D. Defendants shall warrant to all Acquirers of the Divestiture Assets that each asset will be operational on the date of sale.

E. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

F. At the option of the Acquirers, defendants shall enter into a contract for a period of up to one (1) year for transition services customarily necessary to maintain, operate, provision, monitor, or otherwise support the Divestiture Assets. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions.

G. Defendants shall warrant to the Acquirer of the Divestiture Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

H. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing telecommunications business. Divestiture of the Divestiture Assets may be made to more than one Acquirer, provided that (i) all Divestiture Assets in a given metropolitan area are divested to a single Acquirer unless otherwise approved by the United States, in its sole discretion, and (ii) in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to an Acquirer (or Acquirers) that, in the United States's role judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of telecommunications services; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer (or Acquirers) and defendants gives defendants the ability unreasonably to raise the Acquirer's cost, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to complete effectively.

I. To the extent leases, contracts, agreements, intellectual property rights, licenses or other commitments with third-parties are not assignable or transferable without the consent of the licensor or other third parties, defendants shall use their best efforts to obtain those consents.

V. Appointment of Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing, specifically identifying the Divestiture Assets that have not been divested. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to Acquirers acceptable to the United States, in its sole judgment, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, technical experts, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures, including their best efforts to effect all necessary regulatory or other approvals or consents and will provide necessary representations or warranties as appropriate, related to the sale of the Divestiture Assets. The trustee and any consultants, accountants, attorneys, technical experts, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities related to the Divestiture Assets, and defendants shall develop financial and other information relevant to the Divestiture Assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

H. In addition, notwithstanding any provision to the contrary, the United States, in its sole discretion, may require defendants to include additional assets, or allow, with the written approval of

the United States, defendants to substitute substantially similar assets, which substantially relate to the Divestiture Assets to be divested by the trustee to facilitate prompt divestiture to an acceptable Acquirer or Acquirers.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer or Acquirers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer or Acquirers, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer or Acquirers, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Preservation of Assets

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Stipulation signed by defendants and the United States. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of the receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all action defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted.

(1) Access during defendants' office hours to inspect and copy, or at plaintiff's option, to require that defendants provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material,

''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall given defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than grand jury proceedings).

XI. No Reacquisition

Defendants may not reacquire (or lease back without the approval of the United States, in its sole discretion) any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' response to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

APPENDIX A

Address	City	State	Zip	Metropolitan area
City Hall Plz	Boston	MA	02201	Boston-Worcester.
10 Tara Blvd	Nashua	NH	03062	Boston-Worcester.
100 Nagog Park	Acton	MA	01720	Boston-Worcester.
1000 Technology Park Dr	Billerica	MA	01821	Boston-Worcester.
109 State St	Boston	MA	02109	Boston-Worcester.
Hunting Ave	Boston	MA	02116	Boston-Worcester.
110 Spit Brook Rd	Nashua	NH	03062	Boston-Worcester.
12 Hartwell Ave	Lexington	MA	02421	Boston-Worcester.
12 New England Executive Park	Burlington	MA	01803	Boston-Worcester.
125 Cambridgepark Dr	Cambridge	MA	02140	Boston-Worcester.
125 Middlesex Tpke	Bedford	MA	01730	Boston-Worcester.
1255 Boylston St	Boston	MA	02215	Boston-Worcester.
1295 Boylston St	Boston	MA	02215	Boston-Worcester.
132 Brookline Ave	Boston	MA	02215	Boston-Worcester.
135 Santilli Hwy	Everett	MA	02149	Boston-Worcester.
141 Ledge St	Nashua	NH	03060	Boston-Worcester.
1550 Soldiers Field Rd	Boston	MA	02135	Boston-Worcester.
161 Devonshire St	Boston	MA	02110	Boston-Worcester.
165 Dascomb Rd	Andover	MA	01810	Boston-Worcester.
175 Great Rd	Bedford	MA	01730	Boston-Worcester.
180 Hartwell Rd	Bedford	MA	01730	Boston-Worcester.
2 Charlesgate W	Boston	MA	02215	Boston-Worcester.
2 Fenway Plz	Boston	MA	02215	Boston-Worcester.
2 Heritage Dr	Quincy	MA	02171	Boston-Worcester.
211 Congress	Boston	MA	02110	Boston-Worcester.
220 Bear Hill Rd	Waltham	MA	02451	Boston-Worcester.
235 Wyman St	Waltham	MA	02451	Boston-Worcester.
25 Linnell Cir	Billerica	MA	01821	Boston-Worcester.
25 Mall Rd	Burlington	MA	01803	Boston-Worcester.
262 Washington St	Boston	MA	02108	Boston-Worcester.
275 Wyman St	Waltham	MA	02451	Boston-Worcester.
28 Crosby Dr	Bedford	MA	01730	Boston-Worcester.
29 Randolph Rd	Bedford	MA	01731	Boston-Worcester.
3 Clock Tower Pl	Maynard	MA	01754	Boston-Worcester.
30 Hamilton Rd	Lexington	MA	02420	Boston-Worcester.
300 Longwood Ave	Boston	MA	02115	Boston-Worcester.
31 Nagog Park	Acton	MA	01720	Boston-Worcester.
33 Arch St	Boston	MA	02110	Boston-Worcester.
330 Brookline Ave	Boston	MA	02215	Boston-Worcester.
35 Dunham Rd	Billerica	MA	01821	Boston-Worcester.
35 Northeastern Blvd	Nashua	NH	03062	Boston-Worcester.
4 Crosby Dr	Bedford	MA	01730	Boston-Worcester.
40 Old Bolton	Stow	MA	01775	Boston-Worcester.
4040 Mystic Valley Pkwy	Medford	MA	02155	Boston-Worcester.
419 Boylston	Boston	MA	02116	Boston-Worcester.
420 Bedford St	Lexington	MA	02420	Boston-Worcester.
426 Washington St	Boston	MA	02108	Boston-Worcester.
44 Binney St	Boston	MA	02115	Boston-Worcester.
465 Hunting Ave	Boston	MA	02115	Boston-Worcester.
5 Clock Tower Pl	Maynard	MA	01754	Boston-Worcester.
55 North Rd	Bedford	MA	01730	Boston-Worcester.
550 King St	Littleton	MA	01460	Boston-Worcester.

APPENDIX A—Continued

Address	City	State	Zip	Metropolitan area
561 Virginia Rd	Concord	MA	01742	Boston-Worcester.
565 Memorial Dr	Cambridge	MA	02139	Boston-Worcester.
60 1st Ave	Waltham	MA	02451	Boston-Worcester.
600 Technology Park Dr	Billerica	MA	01821	Boston-Worcester.
61 Hancock St	Quincy	MA	02171	Boston-Worcester.
63 3rd Ave	Burlington	MA	01803	Boston-Worcester.
65 Boston Post Rd W	Marlborough	MA	01752	Boston-Worcester.
650 Elm St	Manchester	NH	03101	Boston-Worcester.
67 S Bedford St	Burlington	MA	01803	Boston-Worcester.
7 Shattuck Rd	Andover	MA	01810	Boston-Worcester.
7 Van De Graaff Dr	Burlington	MA	01803	Boston-Worcester.
700 Boylston St	Boston	MA	02116	Boston-Worcester.
745 Boylston St	Boston	MA	02116	Boston-Worcester.
77 S Bedford St	Burlington	MA	01803	Boston-Worcester.
8 Commerce Dr	Bedford	NH	03110	Boston-Worcester.
8 Cotton Rd	Nashua	NH	03063	Boston-Worcester.
80 Central St	Boxborough	MA	01719	Boston-Worcester.
81 Grenier St	Bedford	MA	01731	Boston-Worcester.
90 Central	Boxborough	MA	01719	Boston-Worcester.
900 Technology Park Dr	Billerica	MA	01821	Boston-Worcester.
91 Hartwell Ave	Lexington	MA	02421	Boston-Worcester.
1 International Blvd	Mahwah	NJ	07495	New York.
1 Malcolm Ave	Teterboro	NJ	07608	New York.
1 Rockwood Rd	Sleepy Hollow	NY	10591	New York.
1 Sharp Plz	Mahwah	NJ	07430	New York.
10 Union Sq E	New York	NY	10003	New York.
100 Route 206 North	Peapack	NJ	07977	New York.
100 Wood Ave S	Iselin	NJ	08830	New York.
1000 Harbor Blvd	Weehawken	NJ	07086	New York.
106 Corporate Park Dr	White Plains	NY	10604	New York.
1101 Westchester Ave	White Plains	NY	10604	New York.
1111 Westchester Ave	White Plains	NY	10604	New York.
112 Mulberry St	Newark	NJ	07102	New York.
1212 Avenue of the Americas	New York	NY	10036	New York.
125 Kingsland Ave	Clifton	NJ	07014	New York.
1441 Chestnut Ave	Hillside	NJ	07205	New York.
15 Columbus Cir	New York	NY	10019	New York.
1639 State Rt 10	Parsippany	NJ	07054	New York.
173 Belmont Dr	Somerset	NJ	08873	New York.
180 Water St	New York	NY	10038	New York.
1865 Broadway	New York	NY	10023	New York.
199 Chambers St	New York	NY	10007	New York.
2 Campus Dr	Parsippany	NJ	07054	New York.
200 Metroplex Dr	Edison	NJ	08817	New York.
221 W 26th St	New York	NY	10001	New York.
226 E 54th St	New York	NY	10022	New York.
226 Westchester Ave	White Plains	NY	10604	New York.
230 US Highway 206	Flanders	NJ	07836	New York.
242 W 36th St	New York	NY	10018	New York.
25 W 39th St	New York	NY	10018	New York.
253 Broadway	New York	NY	10007	New York.
27 Randolph St	Carteret	NJ	07008	New York.
27 W 23rd St	New York	NY	10010	New York.
286 Eldridge Rd	Fairfield	NJ	07004	New York.
2975 Westchester Ave	Purchase	NY	10577	New York.
30 Dunnigan Dr	Suffern	NY	10901	New York.
30 Freneau Ave	Matawan	NJ	07747	New York.
346 Broadway	New York	NY	10013	New York.
346 Madison Ave	New York	NY	10017	New York.
360 Park Ave S	New York	NY	10010	New York.
380 Route 59	Airmont	NY	10901	New York.
4 Manhattanville Rd	Purchase	NY	10577	New York.
460 W 54th St	New York	NY	10019	New York.
465 Endo Blvd	Garden City	NY	11530	New York.
485 US Highway 1	Edison	NJ	08817	New York.
501 Franklin Ave	Garden City	NY	11530	New York.
511 Benedict Ave	Tarrytown	NY	10591	New York.
55 Carter Dr	Edison	NJ	08817	New York.
580 White Plains Rd	Tarrytown	NY	10591	New York.
63 Madison Ave	New York	NY	10016	New York.
7 Amherst Pl	White Plains	NY	10601	New York.
7 Campus Dr	Parsippany	NJ	07054	New York.

APPENDIX A—Continued

Address	City	State	Zip	Metropolitan area
70 W Red Oak Ln	West Harrison	NY	10604	New York.
707 Broad St	Newark	NJ	07102	New York.
75 Virginia Rd	White Plains	NY	10603	New York.
80 Grasslands Rd	Elmsford	NY	10523	New York.
800 Westchester Ave	Rye Brook	NY	10573	New York.
845 N Broadway	White Plains	NY	10603	New York.
875 Merrick Ave	Westbury	NY	11590	New York.
Davis Ave	White Plains	NY	10601	New York.
100 S Broad St	Philadelphia	PA	19110	Philadelphia.
1100 N Market St	Wilmington	DE	19801	Philadelphia.
1400 Liberty Ridge Dr	Chesterbrook	PA	19087	Philadelphia.
2 Walnut Grove Dr	Horsham	PA	19044	Philadelphia.
301 W 11th St	Wilmington	DE	19801	Philadelphia.
400 Chesterfield Pkwy	Malvern	PA	19355	Philadelphia.
400 Market St	Philadelphia	PA	19106	Philadelphia.
460 E Swedesford Rd	Wayne	PA	19087	Philadelphia.
620 Lee Rd	Chesterbrook	PA	19087	Philadelphia.
735 Chesterbrook Blvd	Chesterbrook	PA	19087	Philadelphia.
750 East Swedesford Road	Valley Forge	PA	19482	Philadelphia.
900 W Valley Rd	Wayne	PA	19087	Philadelphia.
1 Mcalister Farm Rd	Portland	ME	04103	Portland.
10 Free St	Portland	ME	04101	Portland.
111 Wescott Rd	South Portland	ME	04106	Portland.
121 Free St	Portland	ME	04101	Portland.
137 Kennebec St	Portland	ME	04101	Portland.
144 State St	Portland	ME	04101	Portland.
145 Newbury St	Portland	ME	04101	Portland.
148 Middle St	Portland	ME	04101	Portland.
162 Canco Rd	Portland	ME	04103	Portland.
164 Middle St	Portland	ME	04101	Portland.
2 Ledgeview Dr	Westbrook	ME	04092	Portland.
20 Milk St	Portland	ME	04101	Portland.
25 Bradley Dr	Westbrook	ME	04092	Portland.
25 Preble St	Portland	ME	04101	Portland.
261 Commercial St	Portland	ME	04101	Portland.
3 Canal Plz	Portland	ME	04101	Portland.
33 Sewall St	Portland	ME	04102	Portland.
4 Westbrook Cmn	Westbrook	ME	04092	Portland.
400 Congress St	Portland	ME	04101	Portland.
400 Southborough Dr	South Portland	ME	04106	Portland.
45 Bradley Dr	Westbrook	ME	04092	Portland.
500 Southborough Dr	South Portland	ME	04106	Portland.
51 Nonesuch Cove Rd	Scarborough	ME	04074	Portland.
510 Congress St	Portland	ME	04101	Portland.
565 Congress St	Portland	ME	04101	Portland.
636 Riverside St	Portland	ME	04103	Portland.
65 Bradley St	Portland	ME	04102	Portland.
696 Congress St	Portland	ME	04102	Portland.
1 R I H T Way	Riverside	RI	02915	Providence.
10 Admiral St	Providence	RI	02908	Providence.
10 Dorrance St	Providence	RI	02903	Providence.
111 Brewster St	Pawtucket	RI	02860	Providence.
111 Dorrance St	Providence	RI	02903	Providence.
120 Corliss St	Providence	RI	02904	Providence.
125 Dupont Dr	Providence	RI	02907	Providence.
127 Dorrance St	Providence	RI	02903	Providence.
146 Westminster St	Providence	RI	02903	Providence.
155 S Main St	Providence	RI	02903	Providence.
196 Richmond St	Providence	RI	02903	Providence.
2 Richmond Sq	Providence	RI	02906	Providence.
20 Washington Pl	Providence	RI	02903	Providence.
21 Peace St	Providence	RI	02907	Providence.
259 Pine St	Providence	RI	02903	Providence.
291 Westminster St	Providence	RI	02903	Providence.
30 Chestnut St	Providence	RI	02903	Providence.
4 Richmond Sq	Providence	RI	02906	Providence.
40 Catamore Blvd	East Providence	RI	02914	Providence.
400 Westminster St	Providence	RI	02903	Providence.
444 Westminster St	Providence	RI	02903	Providence.
50 Kennedy Plz	Providence	RI	02903	Providence.
56 Pine St	Providence	RI	02903	Providence.
75 Fountain St	Providence	RI	02902	Providence.

APPENDIX A—Continued

Address	City	State	Zip	Metropolitan area
76 Dorrance St	Providence	RI	02903	Providence.
86 Weybosset St	Providence	RI	02903	Providence.
89 Ship St	Providence	RI	02903	Providence.
1000 Semmes Ave	Richmond	VA	23224	Richmond.
11100 W Broad St	Glen Allen	VA	23060	Richmond.
1200 E Main St	Richmond	VA	23219	Richmond.
1313 E Main St	Richmond	VA	23219	Richmond.
1450 E Parham Rd	Richmond	VA	23280	Richmond.
2040 Thalbro St	Richmond	VA	23230	Richmond.
22150 Tomlyn St	Richmond	VA	23230	Richmond.
2235 Staples Mill Rd	Richmond	VA	23230	Richmond.
4120 Cox Rd	Glen Allen	VA	23060	Richmond.
4461 Cox Rd	Glen Allen	VA	23060	Richmond.
4600 Cox Rd	Glen Allen	VA	23060	Richmond.
4851 Lake Brook Dr	Glen Allen	VA	23060	Richmond.
7814 Carousel Ln	Richmond	VA	23294	Richmond.
9950 Mayland Dr	Richmond	VA	23233	Richmond.
9960 Mayland Dr	Richmond	VA	23233	Richmond.
100 S Ashley Dr	Tampa	FL	33602	Tampa.
10410 Highland Manor Dr	Tampa	FL	33610	Tampa.
10420 Highland Manor Dr	Tampa	FL	33610	Tampa.
10430 Highland Manor Dr	Tampa	FL	33610	Tampa.
10500 University Center Dr	Tampa	FL	33612	Tampa.
110 Douglas Rd E	Oldsmar	FL	34677	Tampa.
1410 N Westshore Blvd	Tampa	FL	33607	Tampa.
1511 N Westshore Blvd	Tampa	FL	33607	Tampa.
18301 Crane Nest Drive	Tampa	FL	33647	Tampa.
18335 Digital Dr	Tampa	FL	33647	Tampa.
1915 N Dale Mabry Hwy	Tampa	FL	33607	Tampa.
2002 N Lois Ave	Tampa	FL	33607	Tampa.
2502 N Rocky Point Dr	Tampa	FL	33607	Tampa.
2701 N Rocky Point Dr	Tampa	FL	33607	Tampa.
3505 E Frontage Rd	Tampa	FL	33607	Tampa.
3608 Queen Plam Dr	Tampa	FL	33619	Tampa.
3800 Citibank Center Tampa	Tampa	FL	33610	Tampa.
3802 Coconut Palm Dr	Tampa	FL	33619	Tampa.
4343 Anchor Plaza Pkwy	Tampa	FL	33634	Tampa.
501 Brooker Creek Blvd	Oldsmar	FL	34677	Tampa.
5050 W Lemon St	Tampa	FL	33609	Tampa.
5120 W Clifton St	Tampa	FL	33634	Tampa.
5201 W Kennedy Blvd	Tampa	FL	33609	Tampa.
5300 W Knox St	Tampa	FL	33634	Tampa.
5401 Hangar Ct	Tampa	FL	33634	Tampa.
550 N Reo St	Tampa	FL	33609	Tampa.
5755 Hoover Blvd	Tampa	FL	33634	Tampa.
8800 Grand Oak Cir	Tampa	FL	33637	Tampa.
8875 Hidden River Pkwy	Tampa	FL	33637	Tampa.
1 Curie Ct	Rockville	MD	20850	Washington-Baltimore.
1000 Wilson Blvd	Arlington	VA	22209	Washington-Baltimore.
10000 Derekwood Ln	Lanham	MD	20706	Washington-Baltimore.
1001 G St NW	Washington	DC	20001	Washington-Baltimore.
107 Carpenter Dr	Sterling	VA	20164	Washington-Baltimore.
10802 Parkridge Blvd	Reston	VA	20191	Washington-Baltimore.
10942 Beaver Dam Rd	Cockeysville	MD	21030	Washington-Baltimore.
10955 Golden West Dr	Hunt Valley	MD	21031	Washington-Baltimore.
111 S Calvert St	Baltimore	MD	21202	Washington-Baltimore.
1111 Constitution Ave NW	Washington	DC	20002	Washington-Baltimore.
11200 Pepper Rd	Hunt Valley	MD	21031	Washington-Baltimore.
120 E Baltimore St	Baltimore	MD	21202	Washington-Baltimore.
1200 1st St SE	Washington	DC	20303	Washington-Baltimore.
12001 Indian Creek Ct	Beltsville	MD	20705	Washington-Baltimore.
12007 Sunrise Valley Dr	Reston	VA	20191	Washington-Baltimore.
1201 Seven Locks Rd	Rockville	MD	20854	Washington-Baltimore.
12012 Sunset Hills Rd	Reston	VA	20190	Washington-Baltimore.
12355 Sunrise Valley Dr	Reston	VA	20191	Washington-Baltimore.
12600 Fair Lakes Cir	Fairfax	VA	22033	Washington-Baltimore.
12701 Fair Lakes Cir	Fairfax	VA	22033	Washington-Baltimore.
1301 Pennsylvania Ave NW	Washington	DC	20004	Washington-Baltimore.
13461 Sunrise Valley Dr	Herndon	VA	20171	Washington-Baltimore.
1350 I St NW	Washington	DC	20005	Washington-Baltimore.
1375 Piccard Dr	Rockville	MD	20850	Washington-Baltimore.
1390 Piccard Dr	Rockville	MD	20850	Washington-Baltimore.

APPENDIX A—Continued

Address	City	State	Zip	Metropolitan area
1401 H St NW	Washington	DC	20005	Washington-Baltimore.
16050 Industrial Dr	Gaithersburg	MD	20877	Washington-Baltimore
16060 Industrial Dr	Gaithersburg	MD	20877	Washington-Baltimore.
1709 New York of Ave NW	Washington	DC	20006	Washington-Baltimore.
1722 I St NW	Washington	DC	20006	Washington-Baltimore.
1759 Business Center Dr	Reston	VA	20190	Washington-Baltimore.
1760 Business Center Dr	Reston	VA	20190	Washington-Baltimore.
1800 G St NW	Washington	DC	20006	Washington-Baltimore.
1800 Robert Fulton Dr	Reston	VA	20191	Washington-Baltimore.
1820 Fort Myer Dr	Arlington	VA	22209	Washington-Baltimore.
1861 International Dr	McLean	VA	22102	Washington-Baltimore.
1900 Campus Commons Dr	Reston	VA	20191	Washington-Baltimore.
1916 Isaac Newton SQ W	Reston	VA	20190	Washington-Baltimore.
2 E Chase St	Baltimore	MD	21202	Washington-Baltimore.
200 Fairbrook Dr	Herndon	VA	20170	Washington-Baltimore.
200 International Cir	Cockeysville	MD	21030	Washington-Baltimore.
2010 Corporate RDG	McLean	VA	22102	Washington-Baltimore.
2021 L St NW	Washington	DC	20036	Washington-Baltimore.
20300 Century Blvd	Germantown	MD	20874	Washington-Baltimore.
20400 Century Blvd	Germantown	MD	20874	Washington-Baltimore.
210 N Charles St	Baltimore.	MD	21201	Washington-Baltimore.
21355 Ridgetop Cir	Dulles	VA	20166	Washington-Baltimore.
21545 Ridgetop Cir	Sterling	VA	20166	Washington-Baltimore.
2216 Gallows Rd	Dunn Loring	VA	22027	Washington-Baltimore.
2240 Broadbirch Dr	Silver Spring	MD	20904	Washington-Baltimore.
22461 Shaw Rd	Sterling	VA	20166	Washington-Baltimore.
22800 Davis Dr	Sterling	VA	20164	Washington-Baltimore.
2401 E St NW	Washington	DC	20241	Washington-Baltimore.
250 E St SW	Washington	DC	20024	Washington-Baltimore.
2650 Park Tower Dr	Vienna	VA	22180	Washington-Baltimore.
2707 Wilson Blvd	Arlington	VA	22201	Washington-Baltimore.
2811 Lord Baltimore Dr	Baltimore	MD	21244	Washington-Baltimore.
300 14th St SW	Washington	DC	20228	Washington-Baltimore.
301 W Preston St	Baltimore	MD	21201	Washington-Baltimore.
307 International Cir	Cockeysville	MD	21030	Washington-Baltimore.
35 Market Pl	Baltimore	MD	21202	Washington-Baltimore.
3910 Keswick Rd	Baltimore	MD	21211	Washington-Baltimore.
4 Choke Cherry Rd	Rockville	MD	20850	Washington-Baltimore.
401 14th St SW	Washington	DC	20024	Washington-Baltimore.
401 M St SW	Washington	DC	20024	Washington-Baltimore.
403 Glenn Dr	Sterling	VA	20164	Washington-Baltimore.
4201 Wilson Blvd	Arlington	VA	22203	Washington-Baltimore.
4330 E West Hwy	Bethesda	MD	20814	Washington-Baltimore.
4350 Fairfax Dr	Arlington	VA	22203	Washington-Baltimore.
450 Springpark Pl	Herndon	VA	20170	Washington-Baltimore.
5 Choke Cherry Rd	Rockville	MD	20850	Washington-Baltimore.
500 N Capitol St NW	Washington	DC	20001	Washington-Baltimore.
5161 River Rd	Bethesda	MD	20816	Washington-Baltimore.
523 E Monument St	Baltimore	MD	21202	Washington-Baltimore.
5260 Western Ave	Chevy Chase	MD	20815	Washington-Baltimore.
540 Huntmar Park Dr	Herndon	VA	20170	Washington-Baltimore.
5515 Security Ln	Rockville	MD	20852	Washington-Baltimore.
5600 Fishers Ln	Rockville	MD	20852	Washington-Baltimore.
575 Herndon Pkwy	Herndon	VA	20170	Washington-Baltimore.
6000 McDill Blvd	Washington	DC	20340	Washington-Baltimore.
6009 Oxon Hill Rd	Oxon Hill	MD	20745	Washington-Baltimore.
601 12th St S	Arlington	VA	22202	Washington-Baltimore.
601 D St NW	Washington	DC	20004	Washington-Baltimore.
601 F St NW	Washington	DC	20004	Washington-Baltimore.
6495 New Hampshire Ave	Hyattsville	MD	20783	Washington-Baltimore.
656 Quince Orchard Rd	Gaithersburg	MD	20878	Washington-Baltimore.
6610 Rockledge Dr	Bethesda	MD	20817	Washington-Baltimore.
666 11th St NW	Washington	DC	20001	Washington-Baltimore.
6710 Oxon Hill Rd	Oxon Hill	MD	20745	Washington-Baltimore.
6801 Rockledge Dr	Bethesda	MD	20817	Washington-Baltimore.
6903 Rockledge Dr	Bethesda	MD	20817	Washington-Baltimore.
7020 Virginia Manor Rd	Beltsville	MD	20705	Washington-Baltimore.
7067 Columbia Gateway Dr	Columbia	MD	21046	Washington-Baltimore.
7129 Ambassador Rd	Baltimore	MD	21244	Washington-Baltimore.
7500 Boston Blvd	Springfield	VA	22153	Washington-Baltimore.
7811 Montrose Rd	Rockville	MD	20854	Washington-Baltimore.
7925 Westpark Dr	McLean	VA	22102	Washington-Baltimore.

APPENDIX A—Continued

Address	City	State	Zip	Metropolitan area
8230 Leesburg Pike	Vienna	VA	22182	Washington-Baltimore.
8230 Old Courthouse Rd	Vienna	VA	22182	Washington-Baltimore.
8400 Baltimore Ave	College Park	MD	20740	Washington-Baltimore.
8521 Leesburg Pike	Vienna	VA	22182	Washington-Baltimore.
8620 Westwood Center Dr	Vienna	VA	22182	Washington-Baltimore.
8930 Stanford Blvd	Columbia	MD	21045	Washington-Baltimore.
9201 Corporate Blvd	Rockville	MD	20850	Washington-Baltimore.
9210 Corporate Blvd	Rockville	MD	20850	Washington-Baltimore.
9211 Corporate Blvd	Rockville	MD	20850	Washington-Baltimore.
9270 Gaither Rd	Gaithersburg	MD	20877	Washington-Baltimore.
9307 Gerwig Ln	Columbia	MD	21046	Washington-Baltimore.
9704 Medical Center Dr	Rockville	MD	20850	Washington-Baltimore.
9840 O'Brian Road	Fort Meade	MD	20755	Washington-Baltimore.
Langley Hqtrs	Langley	VA	22101	Washington-Baltimore.
NASA Goddard SFC Bldg 1	Greenbelt	MD	20771	Washington-Baltimore.
Rte 198 Racetrack Road	Laurel	MD	20725	Washington-Baltimore.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Verizon Communications, Inc. and MCI, Inc., Defendants

Civil Action No.: 1:05CV02103 (HHK)
Filed: November 16, 2005

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendants entered into an Agreement and Plan of Merger dated February 14, 2005—subsequently amended on March 4, March 29, and May 2—pursuant to which Verizon Communications, Inc. (''Verizon'') will acquire MCI, Inc. (''MCI''). The United States filed a civil antitrust Complaint on October 27, 2005 seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially for Local Private Lines and other telecommunications services that rely on Local Private Lines in eight metropolitan areas in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition would result in customers facing higher prices for Local Private Lines and other telecommunications services that rely on Local Private Lines than they would absent the merger.

At the same time the Complaint was filed, the United States also filed a Stipulation and proposed Final Judgment that are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest indefeasible rights of use (''IRUs'') for lateral connections to certain buildings located in a number of metropolitan areas as listed in Appendix A of the proposed Final Judgment (collectively the ''Divestiture Assets''). Under the terms of the Stipulation, Defendants will take certain steps to ensure that these assets are preserved and maintained.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. Defendants have also stipulated that they will comply with the terms of the Stipulation and the proposed Final Judgment from the date of signing of the Stipulation, pending entry of the proposed Final Judgment by the Court and the required divestitures. Should the Court decline to enter the proposed Final Judgment, Defendants have also committed to continue to abide by its requirements and those of the Stipulation until the expiration of time for appeal.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Verizon is a corporation organized and existing under the laws of the State of Delaware, with its headquarters in New York, New York. Verizon, formerly Bell Atlantic Corporation (''Bell Atlantic''), is the nation's largest regional Bell operating company (''RBOC''). Bell Atlantic was one of the seven regional holding companies created as a result of the breakup of AT&T's telephone business into local and long distance components initially in 1984. Since then, Bell Atlantic formed Verizon, including its acquisitions of another RBOC, NYNEX Corporation, and GET Corporation, an incumbent local exchange carrier (''ILEC'') that provided local exchange and other services in 28 states. Verizon owns and operates local telecommunications networks throughout its territory and provides local and long distance voice and data services to, inter alia, business customers and other telecommunications carriers. Today, Verizon's wireline telecommunications operations serve about 51 million total switched access lines, including 32.4 million residential and 17.8 million business lines, in 29 states plus the District of Columbia. In 2004, Verizon earned approximately $38.6 billion in revenues from its domestic wireline services, including at least $8.8 billion in revenue from business customers. Verizon has fiber-optic or copper connections to virtually all of the commercial buildings in its franchised territory.

MCI is a corporation organized and existing under the laws of the State of Delaware, with its headquarters in Ashburn, Virginia. MCI is one of the nation's largest interexchange carriers (''IXC''), offering traditional long distance telephone service, as well as one of the largest competitive local exchange carriers (''CLEC''), offering local network access for voice and data services. MCI serves consumers and businesses across the United States and around the globe, and owns significant

local network assets within Verizon's 29-state operating territory including direct fiber-optic connections to numerous commercial buildings. In 2004, MCI earned approximately $20.7 billion in revenues, including almost $4 billion from domestic business customers.

Pursuant to an Agreement and Plan of Merger dated February 14, 2005, as amended on March 4, March 29, and May 2, 2005, Verizon agreed to acquire MCI for approximately $8.54 billion. The proposed transaction, as agreed to by Defendants, would lessen competition substantially for Local Private Lines and other telecommunication services that rely on Local Private Lines in eight metropolitan areas. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States.

B. Local Private Lines

A Local Private Line is a dedicated, point-to-point circuit offered over copper and/or fiber-optic transmission facilities that originates and terminates within a single metropolitan area and typically includes at least one local loop. A local loop, sometimes referred to as a ''last-mile'' connection, is typically either a copper or fiber-optic transmission facility that connects commercial buildings to a carriers' network, making the local loop a critically important asset for providing telecommunications services to business customers.

Local Private Lines are a recognized service category among telecommunications carriers and end-user business customers and are sold at both retail (to business customers) and wholesale (to other carriers). Depending on how they are configured, Local Private Lines can be used to carry voice traffic, data, or a combination of the two. Local Private Lines may be purchased as stand-alone products but are also an important input to value-added voice and data telecommunications services for business customers and represent a significant portion of the costs incurred in providing those services. Customers typically purchase Local Private Lines in standard bandwidth increments such as DS1 (''T1,'' 1.54 megabits per second), DS3 (44.74 megabits per second), OC3 (155.52 megabits per second), and higher. Local Private Lines can interconnect with industry-standard data networking and telephone equipment, and can be ''channelized'' to carry various amounts of voice and/or data traffic. Local Private Lines are distinct from switched local exchange telephone services, which route calls through a voice switch in the local carrier's central office and do not necessarily use a dedicated circuit. Customers do not consider switched local exchange services to be a substitute because they do not offer the guaranteed bandwidth, high service levels, and security that Local Private Lines provide.

Competing carriers often rely on Local Private Line circuits to connect an end-user customer's location to their networks, enabling the competitor to supply value-added data networking, Internet access, local voice and long distance services to the customer. Although carriers can provide some types of voice and data services over switched local exchange lines (e.g., when an access line is pre-subscribed to a long distance carrier), most large business customers do not find those services to be a viable or cost-effective substitute for voice and data telecommunications services provided via Local Private Lines. In the event of a small, but significant, nontransitory increase in price for either Local Private Lines or voice and data telecommunications services provided via Local Private Lines, insufficient customers would switch to switched circuits to render the increase unprofitable.

For the vast majority of commercial buildings in its territory, Verizon is the only carrier that owns a last-mile connection to the building. Thus, in order to provide Local Private Line circuits or voice or data telecommunications services to customers in those Verizon-only buildings, competing carriers typically must lease the connection from Verizon as Local Private Line service, which Verizon refers to as ''special access'' and MCI refers to as ''metro private line.'' For a small percentage of commercial buildings (though these buildings account for a significant amount of customer demand and revenue), Verizon's CLEC competitors have built or acquired their own last-mile fiber-optic connections, separate from Verizon's, to connect their networks to the buildings. The CLECs typically refer to buildings with these connections as their ''lit buildings'' or ''on-net buildings.'' Once a CLEC has incurred the high fixed cost to construct a last-mile connection to a building, the CLEC can usually provide service to business customers in the building at a lower marginal cost than it would otherwise be able to do if it had to lease the connection from the RBOC. It can also provide alternative access to other CLECs seeking to serve business customers in the building.

The relevant geographic market for both Local Private Lines, as well as voice and data telecommunications services that rely on Local Private Lines, is no broader than each metropolitan area and no more narrow than each individual building.

C. The Competitive Effects of the Transaction on Local Private Lines

Verizon's acquisition of MCI will substantially lessen competition in the markets for (a) Local Private Lines and (b) voice and data telecommunications services that rely on Local Private Lines. Verizon is the dominant provider of Local Private Lines in its franchised territory, and MCI is one of its largest competitors. MCI is among the leading CLECs in Verizon's territory in the number of buildings it has connected with its own last-mile fiber facilities. For hundreds of commercial buildings located in the metropolitan areas of Baltimore-Washington, DC; Boston, Massachusetts; New York, New York; Richmond, Virginia; Providence, Rhode Island; Tampa, Florida; Philadelphia, Pennsylvania; and Portland, Maine, Verizon and MCI are the only two firms that own or control a direct wireline connection to the building. In these buildings, the merger of Verizon and MCI would reduce the number of carriers with an owned or controlled last-mile connection from two to one.

The merger would, therefore, effectively eliminate competition for facilities-based Local Private Line service to those buildings, and many retail and wholesale customers would no longer have MCI as a competitive alternative to Verizon. Although other competitors might resell Local Private Lines from Verizon, those competitors would not be as effective a competitive constraint because Verizon would control the price of the resold circuits. The merged firm would, therefore, have the ability to raise price to retail and wholesale customers of Local Private Lines. In addition, because the cost of dedicated local access via Local Private Line represents an important cost component of many value-added voice and data telecommunications services provided over such access, the merger would tend to lessen competition for retail voice and data telecommunications services provided over dedicated access by (a) eliminating MCI as the only competitive alternative to Verizon for such services with its own Local Private Line connection to hundreds of buildings and (b) depriving other carriers seeking to provide such value-added network services of the

only fully-facilities based wholesale competitive alternative to Verizon in those buildings.

Although other CLECs can, theoretically, build their own fiber connection to each building in response to a price increase by the merged firm, such entry is a difficult, time-consuming, and expensive process. Whether a CLEC builds a last-mile connection to a given building depends upon many factors, as noted in the Complaint, and the costs of building a last-mile fiber-optic connection vary substantially for each location. Because a single such connection may cost hundreds of thousands of dollars to build and light, CLECs will typically only build in to a particular building after they have secured a customer contract of sufficient size and length to justify the anticipated construction costs for that building. While entry may occur in some buildings where MCI is the only CLEC present in response to a post-merger price increase, the conditions for entry are unlikely to be met in the hundreds of buildings that are the subject of the Complaint. For these buildings, the expected customer demand and proximity of other CLEC fiber to the building (two important factors in the decision to build in) indicate that such entry, even in the face of a price increase, is unlikely to be profitable for any CLEC. Thus, entry would not be timely, likely, or sufficient to eliminate the competitive harm that would likely result from Verizon's proposed acquisition of MCI.

For these reasons, the United States concluded that Verizon's proposed acquisition of MCI will likely substantially lessen competition, in violation of Section 7 of the Clayton Act, in the provision of Local Private Lines an other telecommunication services that rely on Local Private Lines in the eight metropolitan areas listed above.

III. Explanation of the Proposed Final Judgment

The divestiture requirements of the proposed final Judgment will eliminate the anticompetitive effects of the acquisition in Local Private Lines and other telecommunications services that rely on Local Private Lines in the relevant areas. The proposed Final Judgment requires Defendants, within 120 days after the closing of Verizon's acquisition of MCI, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the Divestiture Assets. The Divestiture Assets consist of IRUs for lateral connections (or last-mile connection) to hundreds of buildings in the identified metropolitan areas along with transport facilities sufficient to enable the IRUs to be used by the purchaser to provide telecommunications services. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

These assets must be divested in such a way as to satisfy the United States in its sole discretion that they will be used by the purchaser to compete effectively and remedy the harm alleged in the Complaint in the markets for Local Private Lines and other telecommunications services that rely on Local Private Lines. In reviewing the purchaser or purchasers of the Divestiture Assets, the United States will be particularly focused on the purchaser's ability to be a viable competitor in offering Local Private Lines on both a retail and/or wholesale basis. Purchasers that are already offering similar services in or near the metropolitan area are more likely to be viable competitors than other potential purchasers.

Divesting the last-mile connections to the hundreds of buildings in Verizon's territory will remedy the harm alleged in the Complaint. Although other CLECs have local fiber networks in each of the metropolitan areas at issue, they cover only a small percentage of buildings, and the buildings covered vary from CLEC to CLEC. As a result, there are numerous buildings where MCI is the only CLEC with a last-mile connection. It is the decreased competition in the provision of these last-mile connections to buildings where MCI is the only CLEC that creates the harm alleged in the Complaint. Whether the geographic market for the sale of Local Private Line or other telecommunications services that rely on Local Private Lines is as broad as the metropolitan area or as narrow as individual locations or buildings, divesting these last-mile connections will restore the lost facilities-based competition. The proposed Final Judgment also strengthens metropolitan area competition by divesting to a single purchaser in each area all of the buildings that were unique to MCI.

To ensure that the purchaser has adequate capacity to serve customers in a given location, the lateral or last-mile connection to be divested will consist of an IRU for the greater of (1) eight (8) fiber strands or (2) one-half of the currently unused fiber strands in MCI's facilities serving the building measured at the time of the filing of the Complaint, from the point of entry of the building to the splice point with fiber used to serve different buildings. This should be sufficient capacity for the purchaser to serve current demand and allow for future growth and changes in the local service area while allowing Verizon to retain the MCI circuits being used to serve current customers without disruption to their service. In addition, to accommodate network engineering and design requirements, the divestiture IRUs can be granted for fiber strands owned or controlled by either Verizon or MCI, as mutually agreed by Defendants and the purchaser.

Last-mile connections, however, are of little use if they are not connected to a network. Therefore, the proposed Final Judgment also requires the divestiture of IRUs for transport facilities sufficient to connect the divested last-mile connections to locations mutually agreed upon by Defendants and the purchaser. This will ensure that the purchaser can connect the last-mile connections to its network facilities and provide both Local Private Lines and any other telecommunications services that rely on Local Private Lines that a customer in the building may require.

An IRU (or indefeasible right of use) is a long-term leasehold interest commonly used in the telecommunications industry that gives the holder the right to use specified strands of fiber in the telecommunications facility. The proposed Final Judgment contemplates that the purchaser and Defendants will negotiate commercially reasonable IRUs, that must meet minimum requirements, including: (1) To ensure that the purchaser has the asset for a long enough time period to serve customers while taking into account the dynamic nature of the telecommunications industry and the useful life of the existing fiber, the IRU must be for a minimum of 10 years; (2) to minimize ongoing carrying costs for the IRU, the IRU cannot contain a monthly or other recurring fee; and (3) to ensure that Defendants cannot limit the purchasers' use of the last-mile connection, the IRU cannot unreasonably limit the right of the purchaser to use the asset as it wishes (e.g., the purchaser shall be permitted to splice into the IRU fiber, though such splice points must be mutually agreed upon by Defendants and purchaser). This last requirement, allows the purchaser to splice into the IRUs to serve locations other than those listed in Appendix A of the proposed Final Judgment, at mutually agreed upon splice points.

The requirements of the proposed Final Judgment ensure that the purchasers can use the Divested Assets

to begin competing immediately for customers in these buildings and will have the rights and cost structure necessary to be effective by (1) minimizing carrying costs so that viability is not threatened if customers are not immediately procured and (2) giving the purchaser flexibility in use of the last-mile connections by allowing splicing into the fiber.

Lastly, with the approval of the United States, in its sole discretion, and at the purchaser's option, the Divestiture Assets may be modified to exclude assets and rights that are not necessary to meet the aims of this Final Judgment. This will allow for minor modifications of the Divestiture Assets to exclude assets that may not be necessary in order to remedy the competitive harm.

A. Timing of Divestitures

To rapidly restore lost competition, the United States requires divestitures to be completed within the shortest time period reasonable under the circumstances. In this case, the proposed Final Judgment requires, in Section IV.A, divestiture of the Divestiture Assets, within 120 days after the closing of Verizon's acquisition of MCI, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later. The United States in its sole discretion may extend the date for divestiture of the Divestiture Assets by up to sixty (60) days. The divestiture timing provisions of the proposed Final Judgment will ensure that the divestitures are carried out in a timely manner, and at the same time will permit Defendants an adequate opportunity to accomplish the divestitures through a fair and orderly process.

B. Use of a Divestiture Trustee

In the event that Defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures. To ensure that the divestiture trustee can promptly locate and divest to an acceptable purchaser, the United States, in its sole discretion, may require Defendants to include additional assets, or allow Defendants to substitute substantially similar assets, which substantially relate the Divestiture Assets to be divested by the divestiture trustee.

The proposed Final Judgment provides that Defendants will pay all costs and expenses of the divestiture trustee. The divestiture trustee's commission will be structured, under Section V.D of the proposed Final Judgment, so as to provide an incentive for the divestiture trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the divestiture trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestitures. Section V.G of the proposed Final Judgment requires the divestiture trustee to divest the Divestiture Assets to an acceptable purchaser or purchasers no later than six (6) months after his or her appointment. At the end of six (6) months, if all divestitures have not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or term of the trustee's appointment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the pubic interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Nancy M. Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Verizon's acquisition of MCI. The United States is satisfied, however, that the divestiture of assets and other relief described in the proposed Final Judgment will preserve competition for Local Private Lines and other telecommunications services that rely on Local Private Lines in the metropolitan areas identified in the Compliant.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court shall consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint

including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). As the United States Court of Appeals for the District of Columbia Circuit had held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the consent judgment is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the consent judgment may positively harm third parties. See *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

''Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). Thus, in conducting this inquiry, ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).[1]

Rather:

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); see also *Microsoft*, 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *AT&T Corp.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette*, 406 F. Supp. at 716), aff'd sub nom. *Maryland* v. *United States*, 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent judgment even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. Id. at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: November 16, 2005.

Respectfully submitted,

/s/ _____
Laury E. Bobbish,
Assistant Chief.

/s/ _____
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[FR Doc. 05–23815 Filed 12–14–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 8, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

[1] See *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer ''whether the settlement achieved [was] within the reaches of the public interest''). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed by the Department of Justice pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93–1463, 93d Cong., 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538–39.

[2] *Cf. BNS*, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving to disapproving the consent decree''); *Gillette*, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); see generally *Microsoft*, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'''').

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Extension of a currently approved collection.

Title: Cognitive and Psychological Research.

OMB Number: 1220–0141.

Type of Response: Reporting.

Affected Public: Individuals or households.

Frequency: On occasion.

Estimated Number of Respondents: 1,200.

Estimated Number of Annual Responses: 1,200.

Average Response Time: 60 minutes

Estimated Annual Burden Hours: 1,200.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The proposed laboratory research will be conducted from Fiscal Year (FY) 2006 through FY 2008 to enhance data quality in the Bureau of Labor Statistics' surveys. Improvements will be made by examining psychological and cognitive aspects of BLS's data collection procedures, including questionnaire design, interviewing procedures, collection modalities, and administrative technology.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E5–7383 Filed 12–14–05; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of November 2005.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a) (2) (A) (increased imports) of Section 222 have been met.

TA–W–57,896; Cranford Woodcarving, Inc., A Subsidiary of McCrorie Group, Plants 1, 4 and 7, On-Site Leased Workers of Express, Hickory, NC, September 2, 2004.

TA–W–58,104; Tecstar, dba MGS Mfg. Group (The), On-Site Leased Workers, Germantown, WI, September 10, 2004.

TA–W–58,120; Bangor Mills, Inc., Stroudsburg, PA, October 7, 2004.

TA–W–58,121; Computernet, Inc., aka Computernet Resource Group, On-

Site at Burlington Industries, Hurt, VA, October 10, 2004.

TA–W–58,121A; Computernet, Inc., aka Computernet Resource Group, On-Site at Burlington Industries, Greensboro, NC, October 10, 2004.

TA–W–58,131; Quality Oak Products, Inc., Including On-Site Leased Workers of Labor Specialists, Noble, IL, October 6, 2004.

TA–W–58,145; General Cable, A Subsidiary of General Cable Technologies Corp., Dayville, CT, October 17, 2004.

TA–W–58,181; Stimson Lumber Company, Atlas Division, Coeur d' Alene, ID, October 20, 2004.

TA–W–58,256; T-Time Sportswear, Inc., Hazleton, PA, October 24, 2004.

TA–W–58,357; JB Britches, Inc., San Fernando, CA, November 4, 2004.

TA–W–58,215; Bespak, Inc., Apex, NC, October 25, 2004.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–58,133; Joan Fabrics Corporation, Mastercraft Fabrics LLC, Norwood Yarn Sales, Norwood, NC, October 21, 2005.

TA–W–58,133A; Joan Fabrics Corporation, Mastercraft Fabrics LLC, Norwood Yarn Sales, Troy, NC, October 21, 2005.

TA–W–58,184; Georgia-Pacific Corporation, Consumer Products Division, Green Bay, WI, October 12, 2004.

TA–W–58,190; Meridian Automotive Systems, Inc., Company 21, Grand Rapids, MI, October 21, 2004.

TA–W–58,205; Berliss Bearing Co., Livingston, NJ, September 27, 2004.

TA–W–58,226; Alcan Packaging—Cebal Americas, Division of Alcan, Inc., Cypress, CA, October 28, 2004.

TA–W–58,340; Rolatape Corporation, Including Leased Workers of Humanix, Spokane, WA, November 10, 2004.

The following certification has been issued. The requirement of supplier to a trade certified firm has been met.

None.

The following certification has been issued. The requirement of downstream producer to a trade certified firm has been met.

None.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–58,137; BNZ Materials, Inc., Zelienople, PA.

TA–W–58,183; Firestone Tube Company, A Subsidiary of Bridgestone, Firestone North America Tire, Russellville, AR.

TA–W–58,207; Fiskars Home Leisure, A Subsidiary of Fiskars Corporation, Opelika, AL.

TA–W–58,268; Simpson Door Company, McCleary Washington Division, McCleary, WA.

TA–W–58,319; Johnco Hosiery, Inc., Fort Payne, AL.

TA–W–58,324; Cherokee Hosiery Mills, Inc., Fort Payne, AL.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–58,180; Ensign-Bickford Company (The), Trojan Explosives Plant, Booster—Utah Division, Spanish Fork, UT.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–58,112; IMC Products, Inc., Muskegon, MI.

TA–W–58,135; Snap-Tite Hose, Inc., National Fire Hose Plant, Compton, CA.

The investigation revealed that criteria (a)(2)(A)(I.C.) (Increased imports and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

TA–W–58,150; Siemens Energy and Automation, Inc., Distribution Products Division, Bellefontaine, OH.

TA–W–58,150A; Siemens Energy and Automation, Inc., Distribution Products Division, Urbana, OH.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–58,121B; Computernet, Inc., aka Computernet Resource Group, On-Site at Burlington Industries, Stonewall, MS.

TA–W–58,127; Alaska Airlines, Inc., Seattle/Tacoma International Airport, Aircraft Mechanics Department, Seattle, WA.

TA–W–58,127A; Alaska Airlines, Inc., Anchorage International Airport, Aircraft Mechanics Department, Anchorage, AK.

TA–W–58,127B; Alaska Airlines, Inc., Metropolitan Oakland International Airport, Aircraft Mechanics Department, Oakland, CA.

TA–W–58,127C; Alaska Airlines, Inc., San Francisco International Airport, Aircraft Mechanics Department, San Francisco, CA.

TA–W–58,127D; Alaska Airlines, Inc., Los Angeles International Airport, Aircraft Mechanics Department, Los Angeles, CA.

TA–W–58,127E; Alaska Airlines, Inc., Juneau International Airport, Aircraft Mechanics Department, Juneau, AK.

TA–W–58,127F; Alaska Airlines, Inc., Grant County International Airport, Aircraft Mechanics Department, Moses Lake, WA.

TA–W–58,127G; Alaska Airlines, Inc., Snohomish County International Airport, Aircraft Mechanics Department, Everett, WA.

TA–W–58,127H; Alaska Airlines, Inc., Will Rogers World Airport, Aircraft Mechanics Department, Oklahoma City, OK.

TA–W–58,127I; Alaska Airlines, Inc., Wiley Post/W. Rogers M. Airport, Aircraft Mechanics Department, Barrow, AK.

TA–W–58,127J; Alaska Airlines, Inc., Fairbanks International Airport, Aircraft Mechanics Department, Fairbanks, AK.

TA–W–58,127K; Alaska Airlines, Inc., Ketchikan International Airport, Aircraft Mechanics Department, Ketchikan, AK.

TA–W–58,127L; Alaska Airlines, Inc., Nome Airport, Aircraft Mechanics Department, Nome, AK.

TA–W–58,127M; Alaska Airlines, Inc., Kotzebue Airport, Aircraft Mechanics Department, Kotzebue, AK.

TA–W–58,127N; Alaska Airlines, Inc., Prudhoe Bay/Deadhorse Airport, Aircraft Mechanics Department, Prudhoe Bay, AK.

TA–W–58,127O; Alaska Airlines, Inc., Sitka Airport, Aircraft Mechanics Department, Stika, AK.

TA–W–58,127P; Alaska Airlines, Inc., Portland International Airport, Aircraft Mechanics Department, Portland, OR.

TA–W–58,127Q; Alaska Airlines, Inc., Phoenix Sky Harbor International Airport, Aircraft Mechanics Department, Phoenix, AZ.

TA–W–58,128; Northwest Airlines, Technical Operations, Facilities Maintenance, and Ground Operations Division, St. Paul, MN.

TA–W–58,128A; Northwest Airlines, Los Angeles International Airport, Los Angeles, CA.

TA–W–58,128AA; Northwest Airlines, George Bush Intercontinental Airport, Huston, TX.

TA–W–58,128B; Northwest Airlines, San Diego/Lindberg Field International Airport, San Diego, CA.
TA–W–58,128BB; Northwest Airlines, Tampa/St. Petersburg International Airport, Tampa, FL.
TA–W–58,128C; Northwest Airlines, Billings Airport, Billings, MT.
TA–W–58,128CC; Northwest Airlines, McCarran International Airport, Las Vegas, NV.
TA–W–58,128D; Northwest Airlines, Anchorage International Airport, Anchorage, AK.
TA–W–58,128DD; Northwest Airlines, Northern Kentucky Airport, Cincinnati, OH.
TA–W–58,128E; Northwest Airlines, Honolulu Airport, Honolulu, HI.
TA–W–58,128EE; Northwest Airlines, General Mitchell Airport, Milwaukee, WI.
TA–W–58,128F; Northwest Airlines, Minneapolis/St. Paul International Airport, Minneapolis, MN.
TA–W–58,128FF; Northwest Airlines, Hartsfield-Jackson Airport, Atlanta, GA.
TA–W–58,128G; Northwest Airlines, Duluth International Airport, Duluth, MN.
TA–W–58,128GG; Northwest Airlines, Memphis International Airport, Memphis, TN.
TA–W–58,128H; Northwest Airlines, Sky Harbor Airport, Phoenix, AZ.
TA–W–58,128HH; Northwest Airlines, New Orleans Airport, New Orleans, LA.
TA–W–58,128I; Northwest Airlines, San Francisco International Airport, San Francisco, CA.
TA–W–58,128J; Northwest Airlines, Seattle/Tacoma International Airport, Seattle, WA.
TA–W–58,128K; Northwest Airlines, Portland International Airport, Portland, OR.
TA–W–58,128L; Northwest Airlines, Newark International Airport, Newark, NJ.
TA–W–58,128M; Northwest Airlines, John F. Kennedy International Airport, New York, NY.
TA–W–58,128N; Northwest Airlines, La Guardia Airport, New York, NY.
TA–W–58,128O; Northwest Airlines, Philadelphia International Airport, Philadelphia, PA.
TA–W–58,128P; Northwest Airlines, Port Columbus International Airport, Columbus, OH.
TA–W–58,128Q; Northwest Airlines, Logan International Airport, Boston, MA.
TA–W–58,128R; Northwest Airlines, Detroit/Wayne County Airport, Detroit, MI.
TA–W–58,128S; Northwest Airlines, Kansas City International Airport, Kansas City, KS.
TA–W–58,128T; Northwest Airlines, Dallas-Ft. Worth International Airport, Dallas/Ft. Worth, TX.
TA–W–58,128U; Northwest Airlines, Ronald Reagan National Airport, Washington, DC.
TA–W–58,128V; Northwest Airlines, Dulles International Airport, Dulles, VA.
TA–W–58,128W; Northwest Airlines, Orlando International Airport, Orlando, FL.
TA–W–58,128X; Northwest Airlines, Miami International Airport, Miami, FL.
TA–W–58,128Y; Northwest Airlines, Indianapolis International Airport, Indianapolis, IN.
TA–W–58,128Z; Northwest Airlines, O'Hare International Airport, Chicago, IL.
TA–W–58,154; Hewlett-Packard, Nashua, NH.
TA–W–58,2TA–W–58,; ATA Airlines, Inc., Chicago Reservation Center, Chicago, IL.

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

None.

Affirmative Determinations for Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

TA–W–58,104; Tecstar, dba MGS Mfg. Group (The), On-Site Leased Workers, Germantown, WI, September 10, 2004.
TA–W–58,357; JB Britches, Inc., San Fernando, CA, November 4, 2004.
TA–W–57,896; Cranford Woodcarving, Inc., A Subsidiary of McCrorie Group, Plants 1, 4 and 7, On-Site Leased Workers of Express, Hickory, NC, September 2, 2004.
TA–W–58,120; Bangor Mills, Inc., Stroudsburg, PA, October 7, 2004.
TA–W–58,215; Bespak, Inc., Apex, NC, October 25, 2004.
TA–W–58,121; Computernet, Inc., aka Computernet Resource Group, On-Site at Burlington Industries, Hurt, VA, October 10, 2004.
TA–W–58,121A; Computernet, Inc., aka Computernet Resource Group, On-Site at Burlington Industries, Greensboro, NC, October 10, 2004.
TA–W–58,131; Quality Oak Products, Inc., Including On-Site Leased Workers of Labor Specialists, Noble, IL, October 6, 2004.
TA–W–58,145; General Cable, A Subsidiary of General Cable Technologies Corp., Dayville, CT, October 17, 2004.
TA–W–58,181; Stimson Lumber Company, Atlas Division, Coeur d' Alene, ID, October 20, 2004.
TA–W–58,256; T-Time Sportswear, Inc., Hazleton, PA, October 24, 2004.
TA–W–58,133; Joan Fabrics Corporation, Mastercraft Fabrics LLC, Norwood Yarn Sales, Norwood, NC, October 21, 2005.
TA–W–58,133A; Joan Fabrics Corporation, Mastercraft Fabrics LLC, Norwood Yarn Sales, Troy, NC, October 21, 2005.
TA–W–58,184; Georgia-Pacific Corporation, Consumer Products Division, Green Bay, WI, October 12, 2004.
TA–W–58,190; Meridian Automotive Systems, Inc., Company 21, Grand Rapids, MI, October 21, 2004.
TA–W–58,205; Berliss Bearing Co., Livingston, NJ, September 27, 2004.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have not been met for the reasons specified.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–58,137; BNZ Materials, Inc., Zelienople, PA.

TA–W–58,268; Simpson Door Company, McCleary Washington Division, McCleary, WA.
TA–W–58,180; Ensign-Bickford Company (The), Trojan Explosives Plant, Booster—Utah Division, Spanish Fork, UT.
TA–W–58,112; IMC Products, Inc., Muskegon, MI.
TA–W–58,135; Snap-Tite Hose, Inc., National Fire Hose Plant, Compton, CA.
TA–W–58,121B; Computernet, Inc., aka Computernet Resource Group, On-Site at Burlington Industries, Stonewall, MS.
TA–W–58,127; Alaska Airlines, Inc., Seattle/Tacoma International Airport, Aircraft Mechanics Department, Seattle, WA.
TA–W–58,127A; Alaska Airlines, Inc., Anchorage International Airport, Aircraft Mechanics Department, Anchorage, AK.
TA–W–58,127B; Alaska Airlines, Inc., Metropolitan Oakland International Airport, Aircraft Mechanics Department, Oakland, CA.
TA–W–58,127C; Alaska Airlines, Inc., San Francisco International Airport, Aircraft Mechanics Department, San Francisco, CA.
TA–W–58,127D; Alaska Airlines, Inc., Los Angeles International Airport, Aircraft Mechanics Department, Los Angeles, CA.
TA–W–58,127E; Alaska Airlines, Inc., Juneau International Airport, Aircraft Mechanics Department, Juneau, AK.
TA–W–58,127F; Alaska Airlines, Inc., Grant County International Airport, Aircraft Mechanics Department, Moses Lake, WA.
TA–W–58,127G; Alaska Airlines, Inc., Snohomish County International Airport, Aircraft Mechanics Department, Everett, WA.
TA–W–58,127H; Alaska Airlines, Inc., Will Rogers World Airport, Aircraft Mechanics Department, Oklahoma City, OK.
TA–W–58,127I; Alaska Airlines, Inc., Wiley Post/W. Rogers M. Airport, Aircraft Mechanics Department, Barrow, AK.
TA–W–58,127J; Alaska Airlines, Inc., Fairbanks International Airport, Aircraft Mechanics Department, Fairbanks, AK.
TA–W–58,127K; Alaska Airlines, Inc., Ketchikan International Airport, Aircraft Mechanics Department, Ketchikan, AK.
TA–W–58,127L; Alaska Airlines, Inc., Nome Airport, Aircraft Mechanics Department, Nome, AK.
TA–W–58,127M; Alaska Airlines, Inc., Kotzebue Airport, Aircraft Mechanics Department, Kotzebue, AK.
TA–W–58,127N; Alaska Airlines, Inc., Prudhoe Bay/Deadhorse Airport, Aircraft Mechanics Department, Prudhoe Bay, AK.
TA–W–58,127O; Alaska Airlines, Inc., Sitka Airport, Aircraft Mechanics Department, Stika, AK.
TA–W–58,127P; Alaska Airlines, Inc., Portland International Airport, Aircraft Mechanics Department, Portland, OR.
TA–W–58,127Q; Alaska Airlines, Inc., Phoenix Sky Harbor International Airport, Aircraft Mechanics Department, Phoenix, AZ.
TA–W–58,128; Northwest Airlines, Technical Operations, Facilities Maintenance, and Ground Operations Division, St. Paul, MN.
TA–W–58,128A; Northwest Airlines, Los Angeles International Airport, Los Angeles, CA.
TA–W–58,128AA; Northwest Airlines, George Bush Intercontinental Airport, Huston, TX.
TA–W–58,128B; Northwest Airlines, San Diego/Lindberg Field International Airport, San Diego, CA.
TA–W–58,128BB; Northwest Airlines, Tampa/St. Petersburg International Airport, Tampa, FL.
TA–W–58,128C; Northwest Airlines, Billings Airport, Billings, MT.
TA–W–58,128CC; Northwest Airlines, McCarran International Airport, Las Vegas, NV.
TA–W–58,128D; Northwest Airlines, Anchorage International Airport, Anchorage, AK.
TA–W–58,128DD; Northwest Airlines, Northern Kentucky Airport, Cincinnati, OH.
TA–W–58,128E; Northwest Airlines, Honolulu Airport, Honolulu, HI.
TA–W–58,128EE; Northwest Airlines, General Mitchell Airport, Milwaukee, WI.
TA–W–58,128F; Northwest Airlines, Minneapolis/St. Paul International Airport, Minneapolis, MN.
TA–W–58,128FF; Northwest Airlines, Hartsfield-Jackson Airport, Atlanta, GA.
TA–W–58,128G; Northwest Airlines, Duluth International Airport, Duluth, MN.
TA–W–58,128GG; Northwest Airlines, Memphis International Airport, Memphis, TN.
TA–W–58,128H; Northwest Airlines, Sky Harbor Airport, Phoenix, AZ.
TA–W–58,128HH; Northwest Airlines, New Orleans Airport, New Orleans, LA.
TA–W–58,128I; Northwest Airlines, San Francisco International Airport, San Francisco, CA.
TA–W–58,128J; Northwest Airlines, Seattle/Tacoma International Airport, Seattle, WA.
TA–W–58,128K; Northwest Airlines, Portland International Airport, Portland, OR.
TA–W–58,128L; Northwest Airlines, Newark International Airport, Newark, NJ.
TA–W–58,128M; Northwest Airlines, John F. Kennedy International Airport, New York, NY.
TA–W–58,128N; Northwest Airlines, La Guardia Airport, New York, NY.
TA–W–58,128O; Northwest Airlines, Philadelphia International Airport, Philadelphia, PA.
TA–W–58,128P; Northwest Airlines, Port Columbus International Airport, Columbus, OH.
TA–W–58,128Q; Northwest Airlines, Logan International Airport, Boston, MA.
TA–W–58,128R; Northwest Airlines, Detroit/Wayne County Airport, Detroit, MI.
TA–W–58,128S; Northwest Airlines, Kansas City International Airport, Kansas City, KS.
TA–W–58,128T; Northwest Airlines, Dallas-Ft. Worth International Airport, Dallas/Ft. Worth, TX.
TA–W–58,128U; Northwest Airlines, Ronald Reagan National Airport, Washington, DC.
TA–W–58,128V; Northwest Airlines, Dulles International Airport, Dulles, VA.
TA–W–58,128W; Northwest Airlines, Orlando International Airport, Orlando, FL.
TA–W–58,128X; Northwest Airlines, Miami International Airport, Miami, FL.
TA–W–58,128Y; Northwest Airlines, Indianapolis International Airport, Indianapolis, IN.
TA–W–58,128Z; Northwest Airlines, O'Hare International Airport, Chicago, IL.
TA–W–58,154; Hewlett-Packard, Nashua, NH.
TA–W–58,258; ATA Airlines, Inc., Chicago Reservation Center, Chicago, IL.
TA–W–58,321; McKeehan Hosiery Mill, Inc., A Subsidiary of Prewett Mills Distribution Center, Fort Payne, AL.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

I hereby certify that the aforementioned determinations were issued during the month of November 2005. Copies of These determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 7, 2005.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–7380 Filed 12–14–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,041]

Foampro Manufacturing, Inc. Including Workers Whose Wages Were Paid by Barrett Business Services, Irvine, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and a Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on November 2, 2005, applicable to workers of FoamPro Manufacturing, Inc., Irvine, California. The notice was published in the **Federal Register** on November 23, 2005 (70 FR 70883).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of foam painting tools.

Information provided by the company shows that Barrett Business Services was contracted by FoamPro Manufacturing, Inc. to provide payroll function services to workers on-site at the Irvine, California location of FoamPro Manufacturing, Inc.

Information also shows that all workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Barrett Business Services.

Based on these findings, the Department is amending this certification to include workers whose wages were reported by Barrett Business Services at FoamPro Manufacturing, Inc., Irvine, California.

The intent of the Department's certification is to include all workers of FoamPro Manufacturing, Inc. who were adversely affected by a shift in production of foam painting tools to Mexico.

The amended notice applicable to TA–W–58,041 is hereby issued as follows:

All workers of FoamPro Manufacturing, Inc., including workers whose wages were reported by Barrett Business Services, Irvine, California, who became totally or partially separated from employment on or after September 28, 2004, through November 2, 2007, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

I further determine that all workers of FoamPro Manufacturing, Inc., including workers whose wages were reported to Barrett Business Services, Irvine, California are denied eligibility to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of December 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7377 Filed 12–14–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,793]

GE Consumer Finance, a Division of the General Electric Company, Partnership Marketing Group, Schaumberg, IL; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at GE Consumer Finance, a division of The General Electric Company, Partnership Marketing Group, Schaumburg, Illinois. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–57,793; GE Consumer Finance, a division of The General Electric Company, Partnership Marketing Group, Schaumburg, Illinois (November 30, 2005).

Signed at Washington, DC this 7th day of December 2005.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–7376 Filed 12–14–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 27, 2005.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 27, 2005.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 6th day of December 2005.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

APPENDIX—29 TAA

[Petitions instituted between 11/21/05 and 11/25/05]

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
58382	ICT Group (State)	Skokane Valley, WA	11/21/05	11/09/05
58383	Diversco Integrated Services (Comp)	Lawrenceburg, TN	11/21/05	11/18/05
58384	Bekaert Corporation (Comp)	Dyersburg, TN	11/21/05	11/18/05
58385	American Remanufactures, Inc. (Comp)	Bedford, NH	11/21/05	11/18/05
58386	Shepherd Hardware Products, LLC (Wkrs)	Three Oaks, MI	11/21/05	11/16/05
58387	Koret of California, Inc. (Wkrs)	Oakland, CA	11/21/05	11/04/05
58388	Chuan Hing Sewing Co. (Wkrs)	San Francisco, CA	11/22/05	11/21/05
58389	Glass Group, Inc. (The) (USW)	Millville, NJ	11/22/05	11/21/05
58390	JK Tool (State)	Portageville, MO	11/22/05	11/21/05
58391	John Crane, Inc. (Wkrs)	Vandalia, IL	11/22/05	11/21/05
58392	InFocus Corp. (State)	Wilsonville, OR	11/22/05	11/21/05
58393	E.J. Snyder and Company, Inc. (Comp)	Albemarle, NC	11/22/05	11/18/05
58394	Georgia-Pacific Corp. (Comp)	Old Town, ME	11/22/05	11/18/05
58395	Boeing Company (UAW)	Long Beach, CA	11/22/05	11/18/05
58396	Leesburg Knit Mill (Comp)	Leesburg, AL	11/22/05	11/21/05
58397	J.S. McCarthy Printers (Wkrs)	Augusta, ME	11/23/05	11/15/05
58398	Operations Centre (The) (Comp)	Rockford, IL	11/23/05	11/22/05
58399	Applied Interconnect (Comp)	Sunnyvale, CA	11/23/05	11/11/05
58400	Moltech Corporation (State)	Alachua, FL	11/23/05	11/22/05
58401	Accutech Mold and Engineering (State)	Little Falls, MN	11/23/05	11/22/05
58402	Pressed Steel Tank (Wkrs)	West Allis, WI	11/23/05	11/22/05
58403	Integreo, Inc. (State)	Tifton, GA	11/23/05	11/10/05
58404	Weston Food Ltd. (Comp)	West Hazleton, PA	11/23/05	11/22/05
58405	NSK Corporation (UAW)	Ann Arbor, MI	11/23/05	11/18/05
58406	Adobe Air (State)	Phoenix, AZ	11/25/05	11/22/05
58407	Franklin Industries Company (USWA)	Franklin, PA	11/25/05	11/15/05
58408	United States Sugar Corporation (Comp)	Bryant, FL	11/25/05	11/21/05
58409	Shelby Automobiles, Inc. (Comp)	Las Vegas, NV	11/25/05	11/15/05
58410	SKF Sealing Solutions (Comp)	Springfield, SD	11/25/05	11/23/05

[FR Doc. E5–7381 Filed 12–14–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,433; TA–W–53,433A]

International Resistive Company, Inc.; a Subsidiary of TT Electronics, PLC, Boone, NC, Including an Employee of International Resistive Company, Inc., a Subsidiary of TT Electronics, PLC, Boone, NC, Located in Athens, AL; Amended Notice of Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 5, 2003, applicable to workers of International Resistive Company, Inc., a subsidiary of TT Electronics, PLC, Boone, North Carolina. The notice was published in the **Federal Register** on January 16, 2004 (69 FR 2626).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of electronic resistive components.

New information shows that a worker separation occurred involving an employee of the Boone, North Carolina facility of International Resistive Company, Inc. located in Athens, Alabama. Mr. Jack McDaniel provided support services for the production of electronic resistive components at the Boone, North Carolina location of the subject firm.

Based on this new information, the Department is amending this certification to include an employee of the Boone, North Carolina facility of International Resistive Company, Inc., a subsidiary of TT Electronics, PLC, located in Athens, Alabama.

The intent of the Department's certification is to include all workers of International Resistive Company, Inc., a subsidiary of TT Electronics, PLC, Boone, North Carolina, who was adversely affected by increased company imports.

The amended notice applicable to TA–W–53,433 is hereby issued as follows:

All workers of International Resistive Company, Inc., a subsidiary of TT Electronics, PLC, Boone, North Carolina (TA–W–53,433), including an employee of International Resistive Company, Inc., a subsidiary of TT Electronics, PLC, Boone, North Carolina, located in Athens, Alabama (TA–W–53,433A), who became totally or partially separated from employment on or after October 28, 2002 through December 5, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of December 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7375 Filed 12–14–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,700]

Joy Technologies, Inc., DBA Joy Mining Machinery, Mt. Vernon Plant, Mt. Vernon, IL; Notice of Affirmative Determination Regarding Application for Reconsideration

By application of November 3, 2005, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Notice of determination was signed on September 15, 2005, and published in the **Federal Register** on October 31, 2005 (70 FR 62345).

The negative determination was based on no shift of underground mining machinery production abroad and no increased imports of underground mining machinery during the relevant period. Workers produced underground mining machinery and are not separately identifiable by product line.

The Department carefully reviewed the workers' request for reconsideration and has determined that the Department will conduct further investigation based on new information provided by the petitioners.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 16th day of November 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7379 Filed 12–14–05; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

Security and Management Control Outsourcing Standard

AGENCY: National Crime Prevention and Privacy Compact Council.

ACTION: Notice.

SUMMARY: Pursuant to the publication requirement in title 42, United States Code (U.S.C.), section 14616, Article VI(e), the Compact Council (Council), established by the National Crime Prevention and Privacy Compact (Compact) Act of 1998, is providing public notice of the attached combined Security and Management Control Outsourcing Standard (Outsourcing Standard) established by the Council.

DATES: This Outsourcing Standard is effective on December 15, 2005.

FOR FURTHER INFORMATION CONTACT: Todd C. Commodore, FBI CJIS Division, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306; Telephone (304) 625–2803; e-mail *tcommodo@leo.gov;* fax number (304) 625–5388.

SUPPLEMENTARY INFORMATION:

I. Background

The Compact, 42 U.S.C., section 14616, establishes uniform standards and processes for the interstate and Federal-State exchange of criminal history records for noncriminal justice purposes. The Compact was approved by the Congress on October 9, 1998, (Pub. L. 105–251) and became effective on April 28, 1999, when ratified by the second state. Article VI of the Compact provides for a Council that has the authority to promulgate rules and procedures governing the use of the Interstate Identification Index (III) System for noncriminal justice purposes. The III is the system of federal and state criminal history records maintained by the Federal Bureau of Investigation (FBI). On December 16, 2004, the Council published in the **Federal Register**, 69 FR 75243, an interim final rule entitled ''Outsourcing of Noncriminal Justice Administrative Functions.'' Published elsewhere in today's edition of the **Federal Register**, the interim final rule (codified at title 28, Code of Federal Regulations, part 906) is adopted as a final rule without change.

On December 16, 2004, the Council published in the **Federal Register**, 69 FR 75350, a notice with request for comments. The notice provided two Security and Management Control Outsourcing Standards (Outsourcing Standards). The first Outsourcing Standard (''Security and Management Control Outsourcing Standard for Contractors Having Access to CHRI on Behalf of an Authorized Recipient for Noncriminal Justice Purposes'') was to be used by Contractors authorized to perform noncriminal justice administrative functions requiring access to CHRI without a direct connection to the FBI's CJIS Wide Area Network (WAN). The second Outsourcing Standard (''Security and Management Control Outsourcing Standard for Channelers Only'') was to be used by Contractors authorized access to CHRI through a direct connection to the FBI's CJIS WAN. At the May 2005 Council meeting, the Council approved a motion to consolidate the two Outsourcing Standards because they were so similar. Accordingly, the combined Outsourcing Standard is printed below. Hereafter, prior to utilizing the Outsourcing Standard, interested parties should request the most current version by contacting the Compact Council Office, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306, Attention: FBI Compact Officer.

II. Discussion of Comments on the Notice

The 60-day comment period for the notice closed on February 14, 2005. Twelve comments were received from three different sources.

All comments referenced particular sections of the notice. The first comment concerned the definition of ''dissemination'' as provided in section 1.12. The entity submitting the comment believed the definition was referring to ''authorized dissemination'' and it stated that the definition could be used interchangeably within the Outsourcing Standard to refer to both ''authorized'' and ''unauthorized'' dissemination. Based on previous discussion at the Council's Standards Committee meetings, the Council decided to leave the original definition of dissemination intact.

The second comment addressed footnote 2 of section 2.01, which outlines audit requirements by the Compact Officer/Chief Administrator of the Contractor and Authorized Recipients. As the footnote was previously written, all Authorized Recipients and Contractors were to be audited within one year of the signing of the contract. The potential exists for outsourcing by thousands of Authorized Recipients. FBI and state audit resources are limited and it is not feasible to audit all potential Authorized Recipients and Contractors. However, auditing a representative sample is feasible. Accordingly, the Council agreed to

revise footnote 2 to allow a representative sample of audits and defined the term ''representative sample.''

The third comment also dealt with section 2.01 and questioned whether the Authorized Recipient is to ask the Contractor if it has any security violations. Upon review, the Council agreed the language was ambiguous and therefore revised the language by adding the words ''of the FBI Compact Officer'' after the word ''inquire'' to clarify that the Authorized Recipient shall inquire of the FBI Compact Officer whether a prospective Contractor has any security violations.

Comment four recommended amending section 2.02 by adding the words ''or agreement'' after the word ''contract.'' This language change is necessary for the federal community and would also make the wording consistent with similar wording in the Outsourcing Rule. The Council agreed to modify the language.

The fifth comment suggested amending section 2.03 a. and footnote 4 by adding the words ''or authorized'' after the word ''required'' in section 2.03 a. and after the word ''mandated'' in footnote 4. The comment also suggested a corresponding change to section 6.01 by adding the words ''or authorizes'' after the word ''requires.'' Background checks could be authorized, mandated, or required. The Council agreed with the suggested language change and amended those provisions accordingly.

Comment six addressed the second sentence of section 3.05. The individuals who are to provide notice of changes to federal and state laws, regulations, etc., were not identified; therefore, the Council modified the sentence to identify those individuals.

Comment seven expressed a concern regarding section 3.06, specifically, the requirement of announced and unannounced security inspections. Potential Contractors suggested the section be amended to provide reasonable notice prior to audits, and to conduct those audits during normal operating hours so the Contractor could be sure to have appropriate staff on hand. Upon discussion, the Council believes that every effort will be made by the Authorized Recipient, the state, or the FBI to schedule audits in advance and during the Contractor's normal business hours; however, the Council wants to preserve the right to conduct unannounced audits. Therefore, the language in this section was not changed. Comment seven also suggested that section 3.06 be clarified so that Contractors would not be required to provide auditors with access to information unrelated to the Contractor's performance under the contract(s). The Council believes that Contractors will only have to provide relevant information and did not make any language changes.

Comment eight suggested that section 3.07 be amended to make it clear that Contractors can limit access to information about their Security Program, particularly with respect to disclosures to authorized recipients. Contractors should be able to require, for example, that the policy be reviewed at the Contractor's offices and take other steps to further safeguard this sensitive security information. The Council, during its discussion, recognized a Contractor's desire to safeguard information about its Security Program; however, the Council concluded that the Authorized Recipient, the Compact Officer/Chief Administrator, and the FBI CJIS Division must be permitted to review the portion of the Contractor's Security Program that relates to the CJIS Security Policy to ensure necessary security measures are in place. Therefore, the Council decided to leave the existing language intact.

Comment nine concerned the following sentence in Section 6.02: ''If a local, state, or federal written standard requires a criminal history record check for support personnel, Contractors, and custodial workers who work in a physically secure location, then a criminal history record check shall be required for these individuals * * *.'' The comment was made suggesting that the distinction between ''support personnel, contractors, and custodial workers'' and ''Contractor personnel'' could be more explicit. Accordingly, the Council revised this section by replacing the words ''support personnel, contractors, and custodial workers'' with ''non-Contractor personnel.''

Comment 10 concerned section 8.01 c. This section requires the Contractor to immediately notify the Authorized Recipient of any security violation. The comment concerning this section was that a Contractor has an obligation to report security breaches before they are ''known.'' The Council considered revising the section to require a Contractor to report any ''known'' security violations; however, the Council concluded that even if a security violation is unknown to the Contractor, there may be instances when the Contractor ''should have known'' of the security violation. Therefore, the Council decided to make no change to existing language.

Comment 11 concerned Section 8.03 a. That Section provides: ''Notwithstanding the actions taken by the State Compact Officer, if the Authorized Recipient fails to provide a written report notifying the State Compact Officer/Chief Administrator or the FBI Compact Officer of a security violation, or refuses to or is incapable of taking corrective action to successfully resolve a security violation, the Council or the United States Attorney General may suspend or terminate the exchange of CHRI with the Authorized Recipient pursuant to 28 CFR 906.2(d).'' Comment 11 questioned whether this section is acknowledging that action may have been taken by the State Compact Officer. The Council reviewed the definition of ''notwithstanding,'' which may be defined as ''despite.'' In other words, if the State Compact Officer's actions do not result in compliance by the Authorized Recipient, then the Compact Council or the United States Attorney General may take action. The Council concluded the existing language is clear and should not be changed.

The final comment, number 12, challenged the assertion in section 9.03 that the state Compact Officer has the authority to require more stringent security measures in the contract. The Council believes that the Compact Officer/Chief Administrator's explicit authority to approve an outsourcing initiative provides a corresponding authority to require more stringent security measures. Therefore, the Council approved adding the following sentence at the end of footnote 5: ''The Compact Council, Authorized Recipients, and the Compact Officer/Chief Administrator have the explicit authority to require more stringent standards than those contained in the Outsourcing Standard.''

Dated: November 23, 2005.

Donna M. Uzzell,

Compact Council Chairman.

Attachment

Security and Management Control Outsourcing Standard

The goal of this document is to provide adequate security and integrity for criminal history record information (CHRI) while under the control or management of an outsourced third party, the Contractor. Adequate security is defined in Office of Management and Budget Circular A–130 as ''security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information.''

The intent of this Security and Management Control Outsourcing Standard (Outsourcing Standard) is to require that the Contractor maintain a

security program consistent with Federal and State laws, regulations, and standards (including the FBI Criminal Justice Information Services (CJIS) Security Policy) as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General.

This Outsourcing Standard identifies the duties and responsibilities with respect to adequate internal controls within the contractual relationship so that the security and integrity of the Interstate Identification Index (III) System and CHRI are not compromised. The standard security program shall include consideration of site security, dissemination restrictions, personnel security, system security, and data security.

The provisions of this Outsourcing Standard are established by the Compact Council pursuant to 28 CFR Part 906 and are subject to the scope of that rule. They apply to all personnel, systems, networks, and facilities supporting and/or acting on behalf of the Authorized Recipient of CHRI.

Contractors authorized access to CHRI through a direct connection to the FBI's CJIS Wide Area Network (WAN) must adhere to all applicable provisions of this Outsourcing Standard including the bolded portions. Contractors authorized to perform noncriminal justice administrative functions requiring access to CHRI without a direct connection to the FBI's CJIS WAN may ignore the bolded portions but must adhere to all other applicable provisions of this Outsourcing Standard.

1.0 Definitions

1.01 *Access to CHRI* means to use, exchange, retain/store, or view CHRI obtained from the III System but excludes direct access to the III System by computer terminal or other automated means by Contractors other than those that may be contracted by the FBI or state criminal history record repositories or as provided by title 42, United States Code, section 14614(b).

1.02 *Authorized Recipient* means (1) a nongovernmental entity authorized by federal statute or federal executive order to receive CHRI for noncriminal justice purposes, or (2) a government agency authorized by federal statute, federal executive order, or state statute which has been approved by the United States Attorney General to receive CHRI for noncriminal justice purposes.

1.03 *Authorized Recipient's Information Security Officer* means the individual who shall ensure technical compliance with all applicable elements of this Outsourcing Standard.

1.04 *Chief Administrator,* as referred to in Article I(2)(B) of the Compact, means the primary administrator of a Nonparty State's criminal history record repository or a designee of such administrator who is a regular full-time employee of the repository.

1.05 *CHRI,* as referred to in Article I(4) of the Compact, means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release; but does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

1.06 *Criminal History Record Check,* for purposes of this Outsourcing Standard only, means an authorized noncriminal justice fingerprint-based search of a state criminal history record repository and/or the FBI system.

1.07 *CJIS Systems Agency,* as provided in Section 1.4 of the FBI Criminal Justice Information Services (CJIS) Division's Advisory Policy Board Bylaws, means a criminal justice agency which has overall responsibility for the administration and usage of CJIS Division Programs within a state, district, territory, or foreign country. This includes any federal agency that meets the definition and provides services to other federal agencies and/or whose users reside in multiple states or territories.

1.08 *CJIS Systems Officer,* as provided in Section 1.5 of the CJIS Advisory Policy Board Bylaws, means the individual employed by the CJIS Systems Agency who is responsible for monitoring system use, enforcing system discipline and security, and assuring that CJIS operating procedures are followed by all users as well as other related duties outlined by the user agreements with the FBI's CJIS Division. (This title was formerly referred to as the Control Terminal Officer or the Federal Service Coordinator).

1.09 *Compact Officer,* as provided in Article I(2) of the Compact, means (A) with respect to the Federal Government, an official [FBI Compact Officer] so designated by the Director of the FBI [to administer and enforce the compact among federal agencies], or (B) with respect to a Party State, the chief administrator of the State's criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository.

1.10 *Contractor* means a government agency, a private business, non-profit organization or individual, that is not itself an Authorized Recipient with respect to the particular noncriminal justice purpose, who has entered into a contract with an Authorized Recipient to perform noncriminal justice administrative functions requiring access to CHRI. **Under this Outsourcing Standard applicable to channelers, a Contractor includes one who has direct connectivity to the CJIS Wide Area Network (WAN) for the purpose of electronic submission of fingerprints to and the receipt of CHRI from the FBI on behalf of an Authorized Recipient.**

1.11 *Contractor's Security Officer* means the individual accountable for the management of the Contractor's security program.

1.12 *Dissemination* means the disclosure of III CHRI by an Authorized Recipient to an authorized Contractor, or by the Contractor to another Authorized Recipient consistent with the Contractor's responsibilities and with limitations imposed by federal and state laws, regulations, and standards as well as rules, procedures, and standards established by the Compact Council and the United States Attorney General.

1.13 *Noncriminal Justice Administrative Functions* means the routine noncriminal justice administrative functions relating to the processing of CHRI, to include but not limited to the following:

1. Making fitness determinations/recommendations
2. Obtaining missing dispositions
3. Disseminating CHRI as authorized by Federal statute, Federal Executive Order, or State statute approved by the United States Attorney General
4. Other authorized activities relating to the general handling, use, and storage of CHRI

1.14 *Noncriminal Justice Purposes,* as provided in Article I(18) of the Compact, means uses of criminal history records for purposes authorized by federal or state law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

1.15 *Outsourcing Standard* means a document approved by the Compact Council after consultation with the United States Attorney General which is to be incorporated by reference into a contract between an Authorized Recipient and a Contractor. The Outsourcing Standard authorizes access to CHRI, limits the use of the

information to the purposes for which it is provided, prohibits retention and/or dissemination except as specifically authorized, ensures the security and confidentiality of the information, provides for audits and sanctions, provides conditions for termination of the contract, and contains such other provisions as the Compact Council may require.

1.16 *Physically Secure Location* means a location where access to CHRI can be obtained, and adequate protection is provided to prevent any unauthorized access to CHRI.

1.17 *Positive Identification,* as provided in Article I(20) of the Compact, means a determination, based upon a comparison of fingerprints [1] or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III System. Identifications based solely upon a comparison of subjects' names or other nonunique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification.

1.18 *Public Carrier Network* means a telecommunications infrastructure consisting of network components that are not owned, operated, and managed solely by the agency using that network, i.e., any telecommunications infrastructure which supports public users other than those of the agency using that network. Examples of a public carrier network include but are not limited to the following: Dial-up and Internet connections, network connections to Verizon, network connections to AT&T, ATM Frame Relay clouds, wireless networks, wireless links, and cellular telephones. A public carrier network provides network services to the public; not just to the single agency using that network.

1.19 *Security Violation* means the failure to prevent or failure to institute safeguards to prevent access, use, retention, or dissemination of CHRI in violation of: (A) Federal or state law, regulation, or Executive Order; or (B) a rule, procedure, or standard established by the Compact Council and the United States Attorney General.

2.0 Responsibilities of the Authorized Recipient

2.01 Prior to engaging in outsourcing any noncriminal justice administrative functions, the Authorized Recipient shall: (a) Request and receive written permission from (1) the State Compact Officer/Chief Administrator [2] or (2) the FBI Compact Officer [3]; (b) provide the Compact Officer/Chief Administrator copies of the specific authority for the outsourced work, criminal history record check requirements, and/or a copy of the contract as requested; and (c) inquire of the FBI Compact Officer whether a prospective Contractor has any security violations (See Section 8.04). The FBI Compact Officer will report those findings to the Authorized Recipient and, when applicable, to the State Compact Officer/Chief Administrator.

2.02 The Authorized Recipient shall execute a contract or agreement prior to providing a Contractor access to CHRI. The contract shall, at a minimum, incorporate by reference and have appended thereto this Outsourcing Standard.

2.03 The Authorized Recipient shall, in those instances when the Contractor is to perform duties requiring access to CHRI, specify the terms and conditions of such access; limit the use of such information to the purposes for which it is provided; limit retention of the information to a period of time not to exceed that period of time the Authorized Recipient is permitted to retain such information; prohibit dissemination of the information except as specifically authorized by federal and state laws, regulations, and standards as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General; ensure the security and confidentiality of the information to include confirmation that the intended recipient is authorized to receive CHRI; provide for audits and sanctions; provide conditions for termination of the contract; maintain up-to-date records of Contractor personnel who have access to CHRI; and ensure that Contractor personnel comply with this Outsourcing Standard.

a. The Authorized Recipient shall conduct criminal history record checks of Contractor personnel having access to CHRI if such checks are required or authorized of the Authorized Recipient's personnel having similar access.[4]

b. The Authorized Recipient shall ensure that the Contractor maintains site security.

c The Authorized Recipient shall ensure that the most current version of both the Outsourcing Standard and the CJIS Security Policy are incorporated by reference at the time of contract and/or Option renewal.

d. The Authorized Recipient shall ensure that the Contractor establishes and administers an Information Technology (IT) Security Program.

e. The Authorized Recipient shall allow the FBI to periodically test the ability to penetrate the FBI's network through the external network connection or system.

2.04 The Authorized Recipient shall understand the communications and record capabilities of the Contractor which has access to federal or state records through, or because of, its outsourcing relationship with the Authorized Recipient. The Authorized Recipient shall maintain an updated topological drawing which depicts the interconnectivity of the Contractor's network configuration.

2.05 The Authorized Recipient is responsible for the actions of the Contractor and shall monitor the Contractor's compliance to the terms and conditions of the Outsourcing Standard. The Authorized Recipient shall certify to the Compact Officer/Chief Administrator that a compliance review was conducted with the Contractor within 90 days of execution of the contract.

2.06 The Authorized Recipient shall provide written notice of any early voluntary termination of the contract to the Compact Officer/Chief Administrator or the FBI Compact Officer.

2.07 The Authorized Recipient shall appoint an Information Security Officer. The Authorized Recipient's Information Security Officer shall:

a. Serve as the security POC for the FBI CJIS Division Information Security Officer;

b. Document technical compliance with this Outsourcing Standard; and

[1] The Compact Council currently defines positive identification for noncriminal justice purposes as identification based upon a qualifying ten-rolled or qualifying ten-flat fingerprint submission. Further information concerning positive identification may be obtained from the FBI Compact Council office.

[2] The Compact Officer/Chief Administrator may not grant such permission unless he/she has implemented a combined state/federal audit program to, at a minimum, triennially audit a representative sample of the Contractors and Authorized Recipients engaging in outsourcing with the first of such audits to be conducted within one year of the signing of the contract. A representative sample will be based on generally accepted statistical sampling methods.

[3] State or local Authorized Recipients based on State or Federal Statutes shall contact the State Compact Officer/Chief Administrator. Federal or Regulatory Agency Authorized Recipients shall contact the FBI Compact Officer.

[4] If a national criminal history record check of government personnel having access to CHRI is mandated or authorized by a state statute approved by the Attorney General under Public Law 92–544, the State Compact Officer/Chief Administrator must ensure Contractor personnel having similar access are either covered by the existing law or that the existing law is amended to include such Contractor personnel prior to authorizing outsourcing initiatives.

c. Establish a security incident response and reporting procedure to discover, investigate, document, and report on major incidents that significantly endanger the security or integrity of the noncriminal justice agency systems to the CJIS Systems Officer and the FBI CJIS Division Information Security Officer.

3.0 Responsibilities of the Contractor

3.01 The Contractor and its employees shall comply with all federal and state laws, regulations, and standards (including the CJIS Security Policy) as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General.

3.02 The Contractor shall develop and maintain an IT security program. The Contractor is therefore responsible to set, maintain, and enforce the following:

a. Standards for the selection, supervision, and separation of personnel who have access to CHRI.

b. Policy governing the operation of computers, access devices, circuits, hubs, routers, firewalls, and other components that comprise and support a telecommunications network and related CJIS systems used to process, store, or transmit CHRI.

3.03 The Contractor shall develop and document a security program to comply with the current Outsourcing Standard and any revised or successor Outsourcing Standard. The Security Program shall describe the implementation of the security requirements described in this Outsourcing Standard, the associated Security Training Program, and the reporting guidelines for documenting and communicating security violations and corrective actions to the Authorized Recipient. The Security Program shall be subject to the approval of the Authorized Recipient.

3.04 The Contractor shall be accountable for the management of the Security Program. The Contractor shall be responsible for reporting all security violations of this Outsourcing Standard to the Authorized Recipient.

3.05 Except when the training requirement is retained by the Authorized Recipient, the Contractor shall develop a Security Training Program for all Contractor personnel with access to CHRI prior to their appointment/assignment. Immediate training shall be provided upon receipt of notice from the Compact Officer/Chief Administrator on any changes to federal and state laws, regulations, and standards as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General. Annual refresher training shall also be provided. The Contractor shall certify to the Authorized Recipient that the annual refresher training was completed for those Contractor personnel with access to CHRI. The Security Training Program shall be subject to the approval of the Authorized Recipient.

3.06 The Contractor shall make its facilities available for announced and unannounced security inspections performed by the Authorized Recipient, the state, or the FBI on behalf of the Compact Council. Such facilities are also subject to triennial audits by the state and the FBI on behalf of the Compact Council. An audit may also be conducted on a more frequent basis.

3.07 The Contractor's Security Program is subject to review by the Authorized Recipient, the Compact Officer/Chief Administrator, and the FBI CJIS Division. During this review, provision will be made to update the Security Program to address security violations and to ensure changes in policies and standards as well as changes in federal and state law are incorporated.

3.08 The Contractor shall maintain CHRI only for the period of time necessary to fulfill their contractual obligations but not to exceed the period of time that the Authorized Recipient is authorized to maintain and does maintain the CHRI.

3.09 The Contractor shall maintain a log of any dissemination of CHRI.

4.0 Site Security

4.01 The Authorized Recipient shall ensure that the Contractor site is a physically secure location at all times to protect against any unauthorized access to CHRI.

4.02 All visitors to computer centers and/or terminal areas shall be escorted by authorized personnel at all times.

5.0 Dissemination

5.01 Only employees of the Contractor, employees of the Authorized Recipient, and such other persons as may be granted authorization by the Authorized Recipient shall be permitted access to the system.

5.02 The Contractor shall maintain appropriate and reasonable quality assurance procedures.

5.03 Access to the system shall be available only for official purposes consistent with the appended contract. Any dissemination of CHRI data to authorized employees of the Contractor is to be for official purposes only.

5.04 Information contained in or about the system will not be provided to agencies other than the Authorized Recipient or another entity which is specifically designated in the contract.

5.05 The Contractor shall not disseminate CHRI without the consent of the Authorized Recipient, and as specifically authorized by federal and state laws, regulations, and standards as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General.

5.06 An up-to-date log concerning dissemination of CHRI shall be maintained by the Contractor for a minimum one year retention period. This log must clearly identify: (A) The Authorized Recipient and the secondary recipient with unique identifiers, (B) the record disseminated, (C) the date of dissemination, (D) the statutory authority for dissemination, and (E) the means of dissemination.

5.07 The Contractor shall protect against any unauthorized persons gaining access to the equipment, any of the data, or the operational documentation for the system. In no event shall copies of messages or CHRI be disseminated other than as contracted and governed by this Outsourcing Standard.

5.08 All access attempts are subject to recording and routine review for detection of inappropriate or illegal activity.

5.09 The Contractor's system shall be supported by a well-written contingency plan.

6.0 Personnel Security

6.01 If a local, state, or federal written standard requires or authorizes a criminal history record check of the Authorized Recipient's personnel with access to CHRI, then a criminal history record check shall be required of the Contractor's employees having access to CHRI. The criminal history record check of Contractor employees at a minimum will be no less stringent than the criminal history record check that is performed on the Authorized Recipient's personnel performing similar functions. Criminal history record checks must be completed prior to performing work under the contract.

6.02 If a local, state, or federal written standard requires a criminal history record check for non-Contractor personnel who work in a physically secure location, then a criminal history record check shall be required for these individuals, unless these individuals are escorted by authorized personnel at all times. The criminal history record check for these individuals at a minimum will

be no less stringent than the criminal history record check that is performed on the Authorized Recipient's non-Contractor personnel performing similar functions. Criminal history record checks must be completed prior to performing work under the contract.

6.03 The Contractor shall ensure that each employee performing work under the contract is aware of the requirements of the Outsourcing Standard and the state and federal laws governing the security and integrity of CHRI. The Contractor shall confirm that each employee understands the Outsourcing Standard requirements and laws that apply to his/her responsibilities.

6.04 If a criminal history record check is required, the Contractor shall maintain a list of personnel who successfully completed the criminal history record check.

7.0 System Security

7.01 The Contractor's security system shall comply with the CJIS Security Policy in effect at the time the Outsourcing Standard is incorporated into the contract and with successor versions of the CJIS Security Policy as they are made known to the Contractor by the Authorized Recipient.

a. If CHRI can be accessed by unauthorized personnel via Wide Area Network/Local Area Network or the Internet, then the Contractor shall protect the CHRI with firewall-type devices to prevent such unauthorized access. These devices shall implement a minimum firewall profile as specified by the CJIS Security Policy in order to provide a point of defense and a controlled and audited access to CHRI, both from inside and outside the networks.

b. Data encryption shall be required throughout the network, passing CHRI through a shared public carrier network.

7.02 The Contractor shall provide for the secure storage and disposal of all hard copy and media associated with the system to prevent access by unauthorized personnel.

a. CHRI shall be stored in a physically secure location.

b. The Authorized Recipient shall ensure that a procedure is in place for sanitizing all fixed storage media (*e.g.*, disks, drives, backup storage) at the completion of the contract and/or before it is returned for maintenance, disposal, or reuse. Sanitization procedures include overwriting the media and/or degaussing the media.

7.03 To prevent and/or detect unauthorized access to CHRI in transmission or storage, each Authorized Recipient must be identified by an Originating Agency Identifier (ORI) or state assigned identifier, and each Contractor or sub-Contractor must be uniquely identified.

8.0 Security Violations

8.01 Duties of the Authorized Recipient and Contractor

a. The Contractor shall develop and maintain a written policy for discipline of Contractor employees who violate the security provisions of the contract, which includes this Outsourcing Standard that is incorporated by reference.

b. Pending investigation, the Contractor shall immediately suspend any employee who commits a security violation from assignments in which he/she has access to CHRI under the contract.

c. The Contractor shall immediately notify the Authorized Recipient of any security violation or termination of the contract, to include unauthorized access to CHRI made available pursuant to the contract. Within five calendar days of such notification, the Contractor shall provide the Authorized Recipient a written report documenting such security violation, any corrective actions taken by the Contractor to resolve such violation, and the date, time, and summary of the prior notification.

d. The Authorized Recipient shall immediately notify the State Compact Officer/Chief Administrator and the FBI Compact Officer of any security violation or termination of the contract, to include unauthorized access to CHRI made available pursuant to the contract. The Authorized Recipient shall provide a written report of any security violation (to include unauthorized access to CHRI by the Contractor) to the State Compact Officer/Chief Administrator, if applicable, and the FBI Compact Officer, within five calendar days of receipt of the written report from the Contractor. The written report must include any corrective actions taken by the Contractor and the Authorized Recipient to resolve such security violation.

8.02 Termination of the contract by the Authorized Recipient for security violations

a. The contract is subject to termination by the Authorized Recipient for security violations involving CHRI obtained pursuant to the contract.

b. The contract is subject to termination by the Authorized Recipient for the Contractor's failure to notify the Authorized Recipient of any security violation or to provide a written report concerning such violation.

c. If the Contractor refuses to or is incapable of taking corrective actions to successfully resolve a security violation, the Authorized Recipient shall terminate the contract.

8.03 Suspension or termination of the exchange of CHRI for security violations

a. Notwithstanding the actions taken by the State Compact Officer, if the Authorized Recipient fails to provide a written report notifying the State Compact Officer/Chief Administrator or the FBI Compact Officer of a security violation, or refuses to or is incapable of taking corrective action to successfully resolve a security violation, the Compact Council or the United States Attorney General may suspend or terminate the exchange of CHRI with the Authorized Recipient pursuant to 28 CFR § 906.2(d).

b. If the exchange of CHRI is suspended, it may be reinstated after satisfactory written assurances have been provided to the Compact Council Chairman or the United States Attorney General by the Compact Officer/Chief Administrator, the Authorized Recipient and the Contractor that the security violation has been resolved. If the exchange of CHRI is terminated, the Contractor's records (including media) containing CHRI shall be immediately deleted or returned as specified by the Authorized Recipient.

8.04 The Authorized Recipient shall provide written notice (through the State Compact Officer/Chief Administrator if applicable) to the FBI Compact Officer of the following:

a. The termination of a contract for security violations.

b. Security violations involving the unauthorized access to CHRI.

c. The Contractor's name and unique identification number, the nature of the security violation, whether the violation was intentional, and the number of times the violation occurred.

8.05 The Compact Officer/Chief Administrator, Compact Council and the United States Attorney General reserve the right to investigate or decline to investigate any report of unauthorized access to CHRI.

8.06 The Compact Officer/Chief Administrator, Compact Council, and the United States Attorney General reserve the right to audit the Authorized Recipient and the Contractor's operations and procedures at scheduled or unscheduled times. The Compact Council, the United States Attorney General, and the state are authorized to perform a final audit of the Contractor's systems after termination of the contract.

9.0 Miscellaneous Provisions

9.01 This Outsourcing Standard does not confer, grant, or authorize any rights, privileges, or obligations to any persons other than the Contractor, the Authorized Recipient, Compact Officer/Chief Administrator (where applicable), **CJIS Systems Agency**, and the FBI.

9.02 The following document is incorporated by reference and made part of this Outsourcing Standard: (1) The CJIS Security Policy.

9.03 The terms set forth in this document do not constitute the sole understanding by and between the parties hereto; rather they provide a minimum basis for the security of the system and the CHRI accessed therefrom and it is understood that there may be terms and conditions of the appended contract which impose more stringent requirements upon the Contractor.[5]

9.04 The minimum security measures as outlined in this Outsourcing Standard may only be modified by the Compact Council. Conformance to such security measures may not be less stringent than stated in this Outsourcing Standard without the consent of the Compact Council in consultation with the United States Attorney General.

9.05 This Outsourcing Standard may only be modified by the Compact Council and may not be modified by the parties to the appended contract without the consent of the Compact Council.

9.06 Appropriate notices, assurances, and correspondence to the FBI Compact Officer, Compact Council, and the United States Attorney General required by Section 8.0 of this Outsourcing Standard shall be forwarded by First Class Mail to: FBI Compact Officer, 1000 Custer Hollow Road, Module C 3, Clarksburg, WV 26306.

[FR Doc. 05–24056 Filed 12–14–05; 8:45 am]

BILLING CODE 4410–02–P

[5] Such conditions could include additional audits, fees, or security requirements. The Compact Council, Authorized Recipients, and the Compact Officer/Chief Administrator have the explicit authority to require more stringent standards than those contained in the Outsourcing Standard.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–0219–LR; ASLBP No. 06–844–01–LR]

American Energy Company, LLC; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

American Energy Company, LLC (Oyster Creek Nuclear Generating Station)

A Licensing Board is being established pursuant to a September 15, 2005 notice of opportunity for hearing (70 FR 54,585) regarding the July 22, 2005 application for renewal of Operating License No. DPR–16, which authorizes the American Energy Company, LLC, (AmerGen) to operate the Oyster Creek Nuclear Generating Station at 1930 megawatts (Mwt) thermal. The AmerGen renewal application seeks to extend the current operating license for the facility, which expires on April 9, 2009, for an additional twenty years. This proceeding concerns the November 14, 2005 requests for hearing/petitions to intervene filed by (1) the Nuclear Information and Resource Service, Jersey Shore Nuclear Watch, Inc., Grandmother, Mothers and More for Energy Safety, the New Jersey Public Interest Research Group, the New Jersey Environmental Federation, and the New Jersey Sierra Club; and (2) the New Jersey Department of Environmental Protection.

The Board is comprised of the following administrative judges:

E. Roy Hawkens, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Paul B. Abramson, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Anthony J. Baratta, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.302.

Issued at Rockville, Maryland, this 9th day of December 2005.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E5–7388 Filed 12–14–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–16]

Notice of Issuance of Amendment to Materials License SNM 2507 Virginia Electric and Power Company North Anna Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance of license amendment.

FOR FURTHER INFORMATION CONTACT: Jill S. Caverly, Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–6699; Fax number: (301) 415–8555; E-mail: *jsc1@nrc.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Amendment No. 3 to Materials License SNM–2507 held by Virginia Electric and Power Company (Dominion) for the receipt, possession, transfer, and storage of spent fuel at the North Anna Independent Spent Fuel Installation (ISFSI), located in Louisa County, Virginia. The amendment is effective as of the date of issuance.

By application dated September 15, 2004, Dominion requested to amend its ISFSI license to revise Technical Specifications (TS). The revisions change the reference location where the plant specific titles and TS titles are correlated and relocate the Quality Assurance Program facility staff qualification requirements. This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be

significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified. Also in connection with this action, the Commission determined that the action could be classified as a Categorical Exemption under 10 CFR 51.22(c)(11).

Further Information

The NRC has prepared a Safety Evaluation Report (SER) that documents the information that was reviewed and NRC's conclusion. In accordance with 10 CFR 2.390 of NRC's ''Rules of Practice,'' final NRC records and documents regarding this proposed action including the amendment request dated September 15, 2004, and the SER are publically available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). These documents may be inspected at 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 Public Document Room (PDC), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy document for a fee. 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*.

Dated at Rockville, Maryland, this 5th day of December 2005.

For the Nuclear Regulatory Commission.

Jill S. Caverly,

Project Manager, Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–7389 Filed 12–14–05; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in December 2005. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in January 2006.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. Pursuant to the Pension Funding Equity Act of 2004, for premium payment years beginning in 2004 or 2005, the required interest rate is the ''applicable percentage'' (currently 85 percent) of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid. Thus, the required interest rate to be used in determining variable-rate premiums for premium payment years beginning in December 2005 is 4.91 percent (*i.e.*, 85 percent of the 5.78 percent composite corporate bond rate for November 2005 as determined by the Treasury).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between January 2005 and December 2005.

For premium payment years beginning in:	The required interest rate is:
January 2005	4.73
February 2005	4.66
March 2005	4.56
April 2005	4.78
May 2005	4.72
June 2005	4.60
July 2005	4.47
August 2005	4.56
September 2005	4.61
October 2005	4.62
November 2005	4.83
December 2005	4.91

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in January 2006 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 12th day of December 2005.

Vincent K. Snowbarger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 05–24089 Filed 12–14–05; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Rockwell Automation, Inc., To Withdraw Its Common Stock, $1.00 Par Value, (Including the Associated Preferred Share Purchase Rights) From Listing and Registration on the Pacific Exchange, Inc. File No. 1–12383

December 8, 2005.

On December 1, 2005, Rockwell Automation, Inc., a Delaware corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $1.00 par value (including the associated Preferred Share Purchase Rights) (''Security''), from listing and

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

registration on the Pacific Exchange, Inc. (''PCX'').

The Board of Directors (''Board'') of the Issuer adopted a resolution on September 14, 2005 to withdraw the Security from the PCX. The Issuer stated decided to withdraw the Security from PCX because: (i) The trading volume in the Security on PCX is very low and the costs of maintaining the listing are no longer justified; (ii) delisting the Security will enable the Issuer to reduce significantly administrative time and costs associated with the listing, corporate governance, and annual certification requirements of PCX; and (iii) there is little likelihood that the Issuer will need to raise capital through the Exchange in the future. The Issuer believes that delisting from PCX will cause no material inconvenience to its shareowners and investors because the Security will continue to be listed on the New York Stock Exchange, Inc. (''NYSE'').

The Issuer stated in its application that it has complied with the applicable rules of PCX by providing PCX with the required documents governing the withdrawal of securities from listing and registration on PCX.

The Issuer's application relates solely to the withdrawal of the Security from listing on PCX and shall not affect its continued listing on NYSE or its obligation to be registered under section 12(b) of the Act.[3]

Any interested person may, on or before January 4, 2006, comment on the facts bearing upon whether the application has been made in accordance with the rules of PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–12383 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–12383. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7368 Filed 12–14–05; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–2459 / 803–182]

Riverton Management, Inc.; Notice of Application

December 9, 2005.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 (''Advisers Act'').

APPLICANT: Riverton Management, Inc. (''Applicant'').

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 202(a)(11)(F) from section 202(a)(11).

SUMMARY OF APPLICATION: Applicant requests that the SEC issue an order declaring it and its employees acting within the scope of their employment to be persons not within the intent of section 202(a)(11), which defines the term ''investment adviser.''

FILING DATES: The application was filed on March 23, 2005, and amended on November 14, 2005.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving 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 January 5, 2006 and should be accompanied by proof of service on 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. Applicant, Riverton Management, Inc., c/o Steven R. Kruger, Esq. or Charles C. Berquist, Esq., Best & Flanagan LLP, 225 South Sixth Street, Suite 4000, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Catherine E. Marshall, Senior Counsel, or Jennifer Sawin, Assistant Director, at (202) 551–6787 (Division of Investment Management, Office of Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was incorporated in 2001 to serve as a ''family office'' for the members of the Jerome family and their investments and businesses.

2. Applicant provides investment advisory services to: (i) Wallace Jerome, the lineal descendants of Wallace and Marion Jerome and spouses of those lineal descendants (the ''Jerome Family''); and (ii) trusts all of the primary beneficiaries of which are members of the Jerome Family, charitable trusts and foundations created by members of the Jerome Family, and for-profit organizations (including family investment partnerships) that are wholly-owned directly and indirectly by members of the Jerome Family and/or by the trusts, charitable trusts and foundations described above (each of which is a ''Jerome Family Entity'').

3. Applicant's investment advisory services include: discretionary hiring, supervising and terminating of third-party registered investment advisers; reviewing performance data and preparing reports; monitoring and adjusting asset allocations; and advising on the purchase and sale of mutual funds (the ''Advisory Services''). Applicant will provide Advisory Services only to members of the Jerome Family and to Jerome Family Entities (''Advisory Clients''). Applicant represents that the Advisory Services currently are performed primarily for three family investment partnerships and that sometimes it provides Advisory

Services to individual members of the Jerome Family.[1]

4. Applicant states that only 16 percent of the total estimated hours worked by all of its employees are spent providing Advisory Services to Advisory Clients. Applicant also provides non-advisory services to members of the Jerome Family, Jerome Family Entities, and other controlled Jerome Family businesses. Applicant's non-advisory services include: direct management of real estate parcels owned by the Jerome Family's real estate limited partnerships; direct management of auto dealerships owned by the Jerome Family and two key employees; tax planning; trust administration; cash flow planning; estate planning; coordination of banking and other financial accounts; and miscellaneous bookkeeping and administrative services.

5. Applicant represents that the fees received for Advisory Services are not designed to generate a profit.

6. Applicant is owned exclusively by members of the Jerome Family, and its Board of Directors is composed exclusively of members of the Jerome Family.

7. Applicant represents that it will not hold itself out to the public as an investment adviser. Applicant represents that it is not listed in any phone book or any other directory as an investment adviser. Applicant further represents that it does not engage in advertising or marketing activities, and that it will not solicit or accept as an advisory client any person who is not a member of the Jerome Family or a Jerome Family Entity.

Applicant's Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines the term ''investment adviser'' to mean ''any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities * * *.'' Section 202(a)(11)(F) of the Advisers Act authorizes the SEC to exclude from the definition of ''investment adviser'' persons not within the intent of section 202(a)(11).

2. Section 203(b) of the Advisers Act provides exemptions from registration under section 203(a). Applicant represents that it does not qualify for any of the exemptions from registration provided by section 203(b) and that it is not prohibited from registering with the SEC under section 203A.

3. Applicant requests that the SEC issue an order pursuant to section 202(a)(11)(F) declaring it, and its employees acting within the scope of their employment, to be persons not within the intent of section 202(a)(11).

4. Applicant asserts that there is no public interest in requiring Applicant to be registered under the Advisers Act because there is substantial overlap between the persons who control Applicant and the persons who receive Advisory Services from Applicant and because there are no members of the general public who will be receiving Advisory Services and whose interests need protection. Applicant states that it is a private organization that was formed to provide ''family office'' services for clients, consisting exclusively of members of the Jerome Family and Jerome Family controlled entities. Applicant further states that all of its outstanding stock is owned by members of the Jerome Family and that its Board of Directors consists of five persons who are members of the Jerome Family. Applicant also states that: it does not hold itself out to the public as an investment adviser; does not engage in any advertising; will not offer or provide Advisory Services to persons other than Advisory Clients, all of whom are either members of the Jerome Family or Jerome Family Entities; and its services as a ''family office'' will remain its exclusive function.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7363 Filed 12–14–05; 8:45 am]

BILLING CODE 8010–01–P

[1] Applicant states that each of the family investment partnerships that is a Jerome Family Entity is and will be owned by not more than 100 persons, will not make a public offering of its securities, and will come within the exception to the definition of ''investment company'' provided in section 3(c)(1) of the Investment Company Act of 1940.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [70 FR 72318, December 2, 2005].

STATUS: Closed meeting.

PLACE: 100 F Street, NE., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETING: Additional meeting.

An additional closed meeting has been scheduled for Tuesday, December 13, 2005 at 11:45 a.m.

Commissioners and certain staff members who have an interest in the matter will attend the closed meeting.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10) permit consideration of the scheduled matter at the closed meeting.

Commissioner Campos, as duty officer, voted to consider the item listed for the closed meeting in closed session and that no earlier notice thereof was possible.

The subject matter of the closed meeting scheduled for Tuesday, December 13, 2005 will be: Institution and settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: December 12, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–24134 Filed 12–13–05; 11:09 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52912; File No. SR–Amex–2005–120]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Revisions to the Series 4 Examination Program

December 7, 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 21, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. On November 23, 2005, Amex filed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Amendment No. 1 to the proposed rule change. Amex has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act [3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex is filing revisions to the study outline and selection specifications for the Limited Principal—Registered Options (Series 4) examination program (''Series 4 Examination''). The proposed revisions update the material to reflect changes to the laws, rules, and regulations covered by the Series 4 Examination, as well as modify the content of the Series 4 Examination to track more closely the functional workflow of a Series 4 limited principal. The revisions that Amex is submitting with this filing supersede all prior revisions to the Series 4 Examination submitted by Amex.

The revised study outline is available on the National Association of Securities Dealers, Inc.'s (''NASD'') Web site (*http://www.nasd.com*), at Amex, and at the Commission. However, Amex has omitted the Series 4 Examination selection specifications from this filing and has submitted the specifications under separate cover to the Commission with a request for confidential treatment pursuant to Rule 24b–2 under the Act.[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 920 states that a member organization shall not transact any business with the public in option contracts unless those persons engaged in the management of the member organization's business pertaining to option contracts are registered with and approved by the Exchange as Options Principals. Additionally, no individual member shall transact any business directly with the public in option contracts unless he is registered with and approved by the Exchange as an Options Principal. The Series 4 Examination tests a candidate's knowledge of options trading generally, the Amex rules applicable to the trading of option contracts, and the rules of registered clearing agencies for options. The Series 4 Examination covers, among other things, equity options, foreign currency options, index options, and options on government and mortgage-backed securities.

The Series 4 Examination is shared by Amex and the following SROs: The NASD, the Chicago Board Options Exchange, Inc., the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

A committee of industry representatives, together with the staff of Amex and the SROs, recently undertook a periodic review of the Series 4 Examination. As a result of this review and as part of an ongoing effort to align the examination more closely to the supervisory duties of a Series 4 limited principal, Amex is proposing to modify the content of the Series 4 Examination to track the functional workflow of a Series 4 limited principal. More specifically, Amex is proposing to revise the main section headings and the number of questions on each section of the Series 4 Examination study outline as follows: Options Investment Strategies, decreased from 35 to 34 questions; Supervision of Sales Activities and Trading Practices, increased from 71 to 75 questions; and Supervision of Employees, Business Conduct, and Recordkeeping and Reporting Requirements, decreased from 19 to 16 questions. Amex is further proposing revisions to the Series 4 Examination study outline to reflect the SEC short sale requirements. The revised Series 4 Examination continues to cover the areas of knowledge required to supervise options activities.

Amex is proposing these changes to the entire content of the Series 4 Examination, including the selection specifications and question bank. The number of questions on the Series 4 Examination will remain at 125, and candidates will continue to have three hours to complete the exam. Also, each question will continue to count one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade.

On April 8, 2005, Amex filed with the Commission for immediate effectiveness similar revisions to the Series 4 Examination.[6] NASD originally had proposed to implement the revised Series 4 Examination by April 29, 2005.[7] However, due to administrative issues, NASD delayed the implementation date of the revisions until no later than November 30, 2005 and Amex filed with the Commission for immediate effectiveness a proposed rule change delaying the implementation date until such time.[8] In the interim, the SROs that share the Series 4 Examination recommended additional revisions to the Series 4 Examination. These additional revisions are reflected in the examination material that Amex is submitting with this filing. As noted below, NASD has filed with the Commission similar proposed rule change reflecting the revisions to the Series 4 Examination [9] and Amex understands that the other SROs will file similar proposed rule changes.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6 of the Act [10] in general and furthers the objectives of Section 6(c)(3) [11] which authorizes Amex to prescribe standards of training, experience and competence for persons associated with Amex members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] 17 CFR 240.24b–2.

[6] *See* Securities Exchange Act Release No. 51689 (May 12, 2005), 70 FR 28965 (May 19, 2005) (SR–Amex–2005–039).

[7] *See* Securities Exchange Act Release No. 51216 (February 16, 2005), 70 FR 8866 (February 23, 2005) (SR–NASD–2005–025).

[8] *See* Securities Exchange Act Release No. 51690 (May 12, 2005), 70 FR 28967 (May 19, 2005) (SR–Amex–2005–045).

[9] *See* Securities Exchange Act Release No. 52546 (September 30, 2005), 70 FR 59109 (October 11, 2005) (SR–NASD–2005–109).

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(c)(3).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [12] and Rule 19b–4(f)(1) thereunder,[13] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of Amex. While the Series 4 Examination is co-owned by certain SROs, the NASD administers the Series 4 Examination. Amex will announce the implementation date in a *Notice to Members* to be published no later than 60 days after SEC Notice of this filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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–2005–120 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–2005–120. 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 Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–120 and should be submitted on or before January 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7365 Filed 12–14–05; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(i).

[13] 17 CFR 240.19b–4(f)(1).

[14] The effective date of the original proposed rule is November 21, 2005. The effective date of Amendment No. 1 is November 23, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on November 23, 2005, the date on which Amex submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52917; File No. SR–Amex–2005–121]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Revisions to the Series 9/10 Examination Program

December 7, 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 21, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. On November 23, 2005, Amex filed Amendment No. 1 to the proposed rule change. Amex has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to section 19(b)(3)(A)(i) of the Act [3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex is filing revisions to the study outline and selection specifications for the Limited Principal—General Securities Sale Supervisor (Series 9/10) examination program (''Series 9/10 Examination''). The proposed revisions update the material to reflect changes to the laws, rules, and regulations covered by the Series 9/10 Examination, as well as modify the content of the Series 9/10 Examination to track more closely the functional workflow of a Series 9/10 limited principal.

The revised study outline is available on Amex's Web site (*http://www.amex.com*), at Amex, and at the Commission. However, Amex has omitted the Series 9/10 Examination selection specifications from this filing and has submitted the specifications under separate cover to the Commission with a request for confidential treatment pursuant to Rule 24b–2 under the Act.[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in sections A, B,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] 17 CFR 240.24b–2.

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

Amex Rule 341 prohibits members from permitting a direct supervisor of a Registered Representative [6] to perform his duties in such capacity until the direct supervisor is registered with, qualified by and approved by the Exchange. Pursuant to Commentary .06 to Amex Rule 320, a Registered Representative supervisor's responsibilities include approving new accounts and reviewing correspondence of Registered Representatives, transactions and customer accounts. The only examination that qualifies a Registered Representative supervisor is the Series 9/10 Examination. The Series 9/10 Examination tests a candidate's knowledge of securities industry rules and regulations and certain statutory provisions pertinent to the supervision of sales activities.

The Series 9/10 Examination is shared by Amex and the following SROs: the National Association of Securities Dealers, Inc. (''NASD''), the Chicago Board Options Exchange, Inc., the New York Stock Exchange, Inc. (''NYSE''), the Municipal Securities Rule Making Board (''MSRB''), the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

A committee of industry representatives, together with the staff of Amex and the other SROs, recently undertook a periodic review of the Series 9/10 Examination. As a result of this review, Amex is proposing to update the content of the Series 9/10 Examination to cover Regulation S–P,[7] MSRB Rules G–37/G–38, SRO research analyst and anti-money laundering rules, municipal fund securities (*e.g.*, 529 college savings plans), and exchange traded funds. Amex is further proposing revisions to the Series 9/10 Examination study outline to reflect the SEC short sale requirements. In addition, as part of an ongoing effort to align the Series 9/10 Examination more closely to the supervisory duties of a Series 9/10 limited principal, Amex is proposing to modify the content of the Series 9/10 Examination to track the functional workflow of a Series 9/10 limited principal. Also, Amex is proposing to include questions related to parallel rules of NASD, the options exchanges, the MSRB, and the NYSE in the same section of the exam.

As a result of the revisions, Amex is proposing to modify the main section headings and the number of questions on each section of the Series 9/10 Examination study outline as follows: Section 1—Hiring, Qualifications, and Continuing Education, 9 questions; section 2—Supervision of Accounts and Sales Activities, 94 questions; section 3—Conduct of Associated Persons, 14 questions; section 4—Recordkeeping Requirements, 8 questions; section 5—Municipal Securities Regulation, 20 questions; section 6—Options Regulation, 55 questions. Sections 1 through 5 constitute the Series 10 portion of the Series 9/10 Examination. Section 6 constitutes the Series 9 portion of the Series 9/10 Examination. Series 10 covers general securities and municipal securities, and Series 9 covers options. The revised Series 9/10 Examination continues to cover the areas of knowledge required for the supervision of sales activities.

Amex is proposing these changes to the entire content of the Series 9/10 Examination, including the selection specifications and question bank. The number of questions on the Series 9/10 Examination will remain at 200, and candidates will continue to have four hours to complete the Series 10 portion and one and one-half hours to complete the Series 9 portion. Also, each question will continue to count one point, and each candidate must correctly answer 70 percent of the questions on each series, 9 and 10, to receive a passing grade.

As noted below, NASD has filed with the Commission a similar proposed rule change reflecting the revisions to the Series 9/10 Examination [8] and Amex understands that the other SROs also will file similar proposed rule changes.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with section 6 of the Act [9] in general and furthers the objectives of section 6(c)(3) [10] which authorizes Amex to prescribe standards of training, experience and competence for persons associated with Amex members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(i) of the Act [11] and Rule 19b–4(f)(1) thereunder,[12] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of Amex. While the Series 9/10 Examination is co-owned by certain SROs, NASD administers the Series 9/10 Examination. Amex will announce the implementation date in a *Notice to Members* to be published no later than 60 days after SEC Notice of this filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

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:

[6] A ''Registered Representative'' engages in the solicitation of orders for the purchase or sale of securities or other similar instruments for the account of customers; or in the solicitation of subscriptions to investment advisory or to investment management services furnished on a fee basis. The term Registered Representative does not apply to individuals who are engaged solely in the solicitation or handling of business in, or the sale of, commodity contracts or who are engaged solely as securities traders or securities arbitrageurs. See Amex Definition 8.

[7] 17 CFR 248.1–18; 17 CFR 248.30; and 17 CFR 248, Appendix A.

[8] *See* Securities Exchange Act Release No. 52548 (September 30, 2005), 70 FR 59111 (October 11, 2005) (SR–NASD–2005–111).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(c)(3).

[11] 15 U.S.C. 78s(b)(3)(A)(i).

[12] 17 CFR 240.19b–4(f)(1).

[13] The effective date of the original proposed rule is November 21, 2005. The effective date of Amendment No. 1 is November 23, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on November 23, 2005, the date on which Amex submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

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–2005–121 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–2005–121. 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 Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–121 and should be submitted on or before January 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7366 Filed 12–14–05; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52929; File No. SR–BSE–2005–56]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Initial Listing and Maintenance To List Options on Certain Securities

December 8, 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 30, 2005, the Boston Stock Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On December 6, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposed rule change as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act,[4] which rendered the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend section 3 (Criteria for Underlying Securities) and section 4 (Withdrawal of Approval of Underlying Securities) of Chapter IV of the Rules of the Boston Options Exchange (''BOX''). Below is the text of the proposed rule change. Proposed additions are in *italics* and proposed deletions are in [brackets].

* * * * *

Rules of the Boston Options Exchange Facility

Chapter IV. Securities Traded On The Boston Options Exchange Facility

Sec. 3 Criteria for Underlying Securities

(a) Underlying securities with respect to which put or call options contracts are approved for listing and trading on BOX must meet the following criteria:

i. The security must be registered with the SEC and *be an ''NMS stock'' as defined in Rule 600 of Regulation NMS under the Exchange Act*

(1) Listed on a national securities exchange; or

(2) Traded through the facilities of a national securities association and reported as a ''national market system'' (''NMS'') security as set forth in Rule 11Aa3–1 under the Exchange Act]; and

ii. The security shall be characterized by a substantial number of outstanding shares that are widely held and actively traded.

Subsections (b) through (j) No Change.

Sec. 4 Withdrawal of Approval of Underlying Securities

Subsection (a) No Change.

(b) An underlying security will not be deemed to meet BOXR's requirements for continued approval whenever any of the following occur: i. through iv. No Change.

v. {*Reserved*}[The issuer has failed to make timely reports as required by applicable requirements of the Exchange Act or Rules thereunder, and such failure has not been corrected within thirty (30) days after the date the report was due to be filed.]

vi. *The underlying security ceases to be an ''NMS stock'' as defined in Rule 600 of Regulation NMS under the Exchange Act.* [The issue, in the case of an underlying security that is principally traded on a national securities exchange, is delisted from trading on that exchange and neither meets NMS criteria nor is traded through the facilities of a national securities association, or the issue, in the case of an underlying security that is principally traded through the facilities of a national securities association, is no longer designated as an NMS security.]

vii. No Change.

Subsection (c) through (j) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made non-substantive changes to the text of the proposed rule change.

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend a BOX rule pertaining to the continued approval of securities that underlie options traded on the Exchange. Specifically, the Exchange proposes to eliminate section 4(b)(v) of Chapter IV of the BOX rules. Section 4(b)(v) of Chapter IV of the BOX rules sets forth various situations under which an underlying security previously approved for options trading will in usual circumstances be deemed to no longer meet Exchange requirements for the continuance of such approval. In such circumstances, section 4(b)(v) of Chapter IV of the BOX rules provides that the Exchange will not open for trading any additional series of options in that class and may also limit any new opening transactions in those options series that have already be opened.

Currently, section 4(b)(v) of Chapter IV of the BOX rules provides that an underlying security will no longer be approved for options trading on the Exchange when:

''(v) The issuer has failed to make timely reports as required by applicable requirements of the Exchange Act or Rules thereunder, and such failure has not been corrected within thirty (30) days after the date the report was due to be filed.''[5]

The Exchange proposes to eliminate this provision because it limits investors' ability to use options to hedge existing equity positions in such securities, and it is not necessary in the context of the rest of section 4(b) of Chapter IV of the BOX rules.

First, section 4(b)(v) of Chapter IV of the BOX rules can and does impact investors' interests by preventing them from using new options series to hedge positions they may hold in the underlying security of companies that fail to make timely reports required by the Act. The Exchange states that such a restriction is inconsistent with rules and regulations in the markets for the underlying securities because no similar trading restriction is placed upon the trading of the underlying security itself. Thus, section 4(b)(v) of Chapter IV of the BOX rules only serves to limit the abilities of shareholders in such companies who may wish to hedge their positions with new options series, at a time when the ability to hedge may be particularly important.

The Exchange believes that section 4(b)(v) of Chapter IV of the BOX rules has outlived any usefulness and now serves to unnecessarily burden and confuse the investing public. This provision was appropriate when it was first implemented in or around 1976, when the listing and trading of standardized options was still in its infancy and information pertaining to public companies was not readily available to the general investing public. The Exchange believes that today's listed options market, however, is a mature one with investors who have access to a significant amount of real-time market information to assist them in making informed investment decisions, including information as to whether companies have timely filed reports as required by the Act, and if not, why not. Therefore, the Exchange states that there is no reason to limit investors' ability to trade in options classes, including new series within those classes, simply because a company is not timely in filing its reports. The Exchange further advises that this restriction is further misplaced, considering that investors are not similarly restricted from buying or selling shares of the underlying security in the equity markets.

Moreover, the Exchange believes that section 4(b)(v) of Chapter IV of the BOX rules limits an investors' ability to hedge his underlying stock positions at a time when he may be in most need to protect his investment. The failure of a public company to comply with its reporting requirements under the Act could cause a significant movement in the price of that company's stock. Restricting the Exchange from opening new options series may leave investors without means to hedge their positions with options contracts at strike prices that more accurately reflect the contemporaneous price trends of the underlying stock.

Clearly, new options series on a security should not be permitted to be opened if the underlying security ceases to be an NMS stock. Typically, the Exchange becomes aware of issues that may impact the continued listing of a security well before that security is delisted from its primary market. Exchange staff routinely monitors daily press releases and informational releases disseminated by various entities, such as the primary listing market of a security and private news services, in an effort to monitor the activities and news items pertaining to the issuers of securities that underlie options traded on the Exchange.[6] In many cases, an issuer is given a substantial amount of time to cure this deficiency before the primary market actually delists the issuer's security. Many times, the issuer is able to comply without its security ever being delisted. During this period, BOX staff continually monitors the status of the issuer's compliance with its reporting requirements to determine whether the security may be delisted. Finally, the primary listing market typically issues a press release well in advance of delisting an issuer's security to give investors and other market participants adequate notice.

Given the availability of data and information relating to public issuers of securities in today's markets, and in light of the extensive amount of additional continued listing standards under section 4(b) of Chapter IV of the BOX rules, the Exchange believes that waiting until a security is actually delisted by its primary market is the appropriate point at which to restrict the issuance of new options series in an options class. Accordingly, the Exchange hereby proposes to eliminate section 4(b)(v) of Chapter IV of the BOX rules.

Additionally, as a matter of ''housekeeping,'' the Exchange also proposes to clarify section 3(a)(i) and section (4)(b)(vi) of Chapter IV of the BOX rules, which govern the criteria for the initial and continued listing of options on a particular security, respectively. Both of these provisions include as part of their criteria a requirement that the underlying security must be a national market system security (''NMS security''). As part of the recently adopted Regulation NMS, among other things, the Commission revised the definition of an NMS security.[7] Specifically, Rule 600(b) under Regulation NMS defines an NMS security as ''any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.'' As such, each of these Rules will be amended to reflect these new terms.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[5] Phrase ''or Rules thereunder'' added pursuant to telephone conference between Bill Meehan, Assistant Vice President, Exchange, and David L. Orlic, Attorney, Division of Market Regulation, Commission, on December 7, 2005.

[6] This is consistent with Section 4(d) of Chapter IV of the BOX rules.

[7] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

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 the elimination of section 4(b)(v) of Chapter IV of the BOX rules will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system and is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay period for ''non-controversial'' proposals and make the proposed rule change effective and operative upon filing. The Commission believes that waiver of the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest because this filing does not raise any novel issues. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BSE–2005–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–BSE–2005–56. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2005–56 and should be submitted on or before January 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7369 Filed 12–14–05; 8:45 am]

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[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52928; File No. SR–CBOE–2005–89]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Adoption of a Hybrid Agency Liaison System for Automated Handling of Inbound Orders That Are Not Automatically Executed

December 8, 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 October 27, 2005, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. CBOE filed Amendment No. 1 to the proposed rule change on December 7, 2005.[3] The Commission is publishing this notice to solicit comment 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

CBOE proposes to amend its rules to adopt a Hybrid Agency Liaison (''HAL'') system for automated handling of inbound orders. The text of the proposed rule change is set forth below. Proposed new language is in *italics.*

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety.

Rule 6.13. CBOE Hybrid System's Automatic Execution Feature

(a) No change.

(b) Automatic Execution

(i)–(iii) No change.

(iv) Executions at NBBO: Eligible orders in classes that are multiply traded will not be automatically executed on CBOE at prices that are inferior to the NBBO and instead shall route to *HAL,* the PAR workstation in the trading crowd or, at the order entry firm's discretion, to BART. Eligible orders received while the CBOE market is locked (e.g., $1.00 bid—$1.00 offered) shall be eligible for automatic execution at CBOE's disseminated quote, provided that the disseminated quote is not inferior to the NBBO.

(c)–(e) No change.

* * * * *

Rule 6.14 Hybrid Agency Liaison (HAL)

This Rule governs the operation of the HAL system. HAL is a feature within the Hybrid System that provides automated order handling in designated Hybrid option classes for qualifying electronic orders that are not automatically executed by the Hybrid System.

(a) HAL Eligibility. The Exchange, with input from the appropriate Floor Procedure Committee, shall designate the classes in which HAL shall be activated. For such classes, HAL shall automatically process upon receipt, as set forth in subparagraph (b) below, market and limit orders under the following circumstances:

(i) Market orders or limit orders that are marketable against the Exchange's disseminated quotation while that quotation is not the NBBO;

(ii) Limit orders that would improve the Exchange's disseminated quotation and that are marketable against quotations disseminated by other exchanges that are participants in the Intermarket Options Linkage; and

(iii) Limit orders that would improve the Exchange's disseminated quotation.

(b) HAL Order Handling. Orders that are received by HAL pursuant to subparagraph (a) above shall immediately upon receipt be electronically exposed to all Market-Makers appointed to the relevant option class as well as all members acting as agent for orders at the top of the Exchange's book (''Qualifying Members'') in the relevant option series. The exposure shall be for a period of time determined by the Exchange on a class-by-class basis, with input from the appropriate Floor Procedure Committee, which period of time shall not exceed 1.5 seconds. If during the exposure period, a Market-Maker or Qualifying Member (on behalf of the order it is representing) commits to trade with any portion of the order, then the exposure period shall end (the Exchange will disseminate a last sale report for the quantity committed to) and an allocation period shall commence (with additional last sale reports being immediately disseminated for any additional portions of the order that are committed to during this period). At no point will HAL execute an order, or any portion of an order, if such execution would cause a trade-through. The allocation period shall be a period of time determined by the Exchange on a class-by-class basis, with input from the appropriate Floor Procedure Committee, which period of time, when combined with the designated exposure period time (as opposed to an exposure period that is terminated early), shall not exceed a total of three (3) seconds. Allocation of the order shall be pursuant to subparagraph (c) below. If no responses are received during the exposure period or if there remains an unexecuted portion of an order at the conclusion of the allocation period, then the order (the ''Remaining Order'') shall be processed as follows:

(i) If the Remaining Order is for the account of a public customer and is marketable against another exchange that is a participant in the Intermarket Options Linkage, then HAL shall route a P/A Order on behalf of the Remaining Order through the Linkage and any resulting execution of the P/A Order shall be allocated to the Remaining Order. If the P/A Order cannot be transmitted from the Exchange because the price of the P/A Order (or a better price) is no longer available on any market, then HAL shall, pursuant to normal order allocation processing, execute the Remaining Order against the Exchange's quote (provided such execution would not cause a trade-through) including, if appropriate, at the Exchange's BBO at the time the order was received by HAL (''Exchange Initial BBO'') against the Market-Makers that constituted the Exchange Initial BBO;

(ii) If the Remaining Order is marketable against another exchange that is a participant in the Intermarket Options Linkage but is not for the account of a public customer, then HAL, when the system is enabled, shall route a Principal Order on behalf of the Remaining Order through the Linkage and any resulting execution of the Principal Order shall be allocated to the Remaining Order. If the Principal Order cannot be transmitted from the Exchange because the price of the Principal Order (or a better price) is no longer available on any market, then HAL shall, pursuant to normal order allocation processing, execute the Remaining Order against the Exchange's quote (provided such execution would not cause a trade-through) including, if appropriate, at the Exchange Initial BBO at the time the order was received by HAL against the Market-Makers that constituted the Exchange Initial BBO. Until the HAL system is enabled to route Principal Orders, the Remaining Order shall route to PAR;

(iii) If the Remaining Order is not marketable (either on the Exchange or another exchange) it shall be entered into the Hybrid book for dissemination.

(c) Allocation of Exposed Orders. Each Market-Maker or Qualifying Member that submits an order or quote to trade with an order during the exposure or allocation periods shall be entitled to receive an allocation of the order in accordance with the allocation algorithm in effect for the option class pursuant to Rule 6.45A or 6.45B. There is no participation entitlement applicable to exposed orders, and response sizes are limited to the size of the exposed order for allocation purposes.

(d) Early Termination of Exposure Period. In addition to the receipt of a response to trade any portion of the exposed order, the exposure period will also terminate early under the following circumstances:

(i) If during the exposure period the Hybrid System receives an unrelated order on the opposite side of the market from the exposed order that could trade against the exposed order at the prevailing NBBO price, then the orders will trade. However, the exposure period shall not terminate for any quantity that remains on the exposed order after such trade;

(ii) If during the exposure period the Hybrid System receives an unrelated order on the same side of the market as the exposed order that is priced equal to or better than the exposed order, then the exposure period shall terminate and the exposed order shall be processed in accordance with subparagraph (b) (i), (ii) or (iii), as appropriate;

(iii) If during the exposure of an order that is marketable against the Exchange Initial BBO, a Market-Maker attempts to move its quote to a price that is inferior to the Exchange Initial BBO, then the exposure period shall terminate and the exposed order shall be processed in accordance with subparagraph (b) (i) or (ii), as appropriate.

(e) Early Termination of Allocation Period.

(i) If HAL is in the allocation stage of processing an order that has not been

fully executed (i.e. all responses that have been received to that point cannot fully execute the order) and the Hybrid System receives an unrelated order on the opposite side of the market from the order that could trade against the order at the prevailing NBBO price, then the orders will trade. However, the allocation period shall not terminate with respect to any portion of the HAL order that did not execute against the unrelated order;

(ii) If HAL is in the allocation stage of processing an order that has not been fully executed (i.e. all responses that have been received to that point cannot fully execute the order) and the Hybrid System receives an unrelated order on the same side of the market as the order, then the allocation period shall terminate for the unexecuted portion of the order and the unexecuted portion of the order shall be processed in accordance with subparagraph (b) (i), (ii) or (iii), as appropriate;

(iii) If HAL is in the allocation stage of processing an order that is marketable against the Exchange Initial BBO and a Market-Maker attempts to move its quote to a price that is inferior to the Exchange Initial BBO while any portion of the order remains unexecuted (i.e. all responses that have been received to that point cannot fully execute the order), then the allocation period shall terminate and the unexecuted portion of the order shall be processed in accordance with subparagraph (b) (i) or (ii), as appropriate.

** * * Interpretations and Policies:*

.01 A pattern or practice of submitting unrelated orders that cause an exposure period to conclude early will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 4.1 and other Exchange Rules.

.02 Disseminating information regarding exposed orders to third parties will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 4.1 and other Exchange Rules.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposal 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. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to implement HAL, a new order handling system for option classes trading on CBOE's Hybrid System (''Hybrid''). Hybrid provides electronic executions for orders that are marketable against the Exchange's quote when it is priced at the National Best Bid or Offer (''NBBO''). The entire process for those orders is automated; however, many electronically-received orders that are not automatically executed upon receipt by the Hybrid System (usually because CBOE's disseminated quote is not the NBBO) are routed to a PAR terminal for manual handling. Proposed CBOE Rule 6.14 is meant to automate the process of handling most orders that would otherwise go to PAR.

Currently, if the Exchange receives a marketable order when its disseminated quote is not the NBBO, the order routes to PAR where it must be selected by the PAR Official (there may be multiple orders on PAR at the same time) and then represented to the trading crowd in open-outcry. The order is represented to determine if any trading crowd members are willing to step up and match the NBBO price available on another exchange. If there is interest in the crowd to match the NBBO, then the order will be manually filled. If there is no interest in matching the NBBO price, an order will be generated and transmitted via the Intermarket Option Linkage (''Linkage'') to the NBBO market on behalf of the order on PAR. If the Linkage order is filled, that fill will be transferred to the order on PAR. While all of this is done relatively quickly, the HAL system would automate this process and reduce the timing to a matter of seconds (in no case more than three seconds). The following is an explanation of how HAL would work.

HAL would only be available for classes trading on Hybrid. The Exchange, with input from the appropriate Floor Procedure Committee, would designate the Hybrid classes for which HAL would be activated. For those classes, HAL would process (i) market orders or limit orders that are marketable against CBOE's disseminated quote while that quote is not the NBBO; (ii) limit orders that would improve the Exchange's disseminated quote and that are marketable against quotes disseminated by other exchanges that are participants in the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (''Linkage Plan''); and (iii) limit orders that are not marketable against the NBBO but that would improve CBOE's disseminated quote. These orders would be electronically exposed (flashed) to all Market-Makers appointed to the relevant option class as well as to all members acting as agent for orders at the top of the Exchange's book in the relevant option series (''Qualifying Members'').[4] Like with open outcry, this flash would afford crowd members an opportunity to match the away NBBO price.

HAL's first step in flashing an order would be to gauge if there is any interest from any Market-Maker or Qualifying Member in matching the away NBBO price, or, in the case of a limit order that improves CBOE's quote but is not marketable, in filling the order instead of booking it. This step is called the exposure period. The exposure would be for a period of time determined by the Exchange on a class-by-class basis, with input from the appropriate Floor Procedure Committee, which period of time would not exceed 1.5 seconds. If during the exposure period, a Market-Maker or Qualifying Member (on behalf of the order it is representing) commits to trade with any portion of the order, then the exposure period would end (with a last sale report being issued for the quantity that was traded) and an allocation period would begin.

The allocation period affords other participants that were attempting to trade with the exposed order a chance to participate in the execution of the order. The allocation period would be a period of time determined by the Exchange on a class-by-class basis, with input from the appropriate Floor Procedure Committee, which period of time, when combined with the designated exposure period time (as opposed to an exposure period that is terminated early), would not exceed a total of three seconds. For example, if the exposure period is set to 1.5 seconds, the allocation period cannot exceed 1.5 seconds. If the exposure period is set for one second, the allocation period cannot exceed two seconds. Of course, in that case the Exchange could determine to set the allocation period at one second or anything less than two seconds (*i.e.*, the

[4] Of course, eligible recipients of these ''flash'' messages may need to undertake some programming modifications in order to receive and respond to these messages. The Exchange will not require those programming changes.

entire HAL process does not have to equal three seconds). Further, if an exposure period for a given order is terminated early, the ''unused balance'' of the exposure period is not added to the allocation period.

Exposed orders would be allocated at the conclusion of the allocation period in accordance with the allocation algorithm in effect for the option class pursuant to CBOE Rule 6.45A or 6.45B. There is no participation entitlement applicable to exposed orders, and response sizes are limited to the size of the exposed order for allocation purposes.

If no responses are received during the exposure period or if there remains an unexecuted portion of an order at the conclusion of the allocation period, then the order (the ''Remaining Order'') would be booked if it is a limit order that is not marketable, or processed in one of the following two ways, based on whether the order is for the account of a public customer. First, if the Remaining Order is for the account of a public customer and is marketable against another exchange that is a participant in the Linkage Plan, then HAL would route a Principal Acting as Agent Linkage Order (''P/A Order'') on behalf of the Remaining Order through the Linkage and any resulting execution of the P/A Order would be allocated to the Remaining Order. Second, if the Remaining Order is marketable against another exchange that is a participant in the Linkage Plan but is not for the account of a public customer, then HAL, when the system is enabled, would route a Principal Linkage Order (''P Order'') on behalf of the Remaining Order through the Linkage, and any resulting execution of the P Order would be allocated to the Remaining Order.[5] Until the HAL system is enabled to route P Orders, the Remaining Order would route to PAR.

In either of these situations, if the Linkage order cannot be transmitted from the Exchange because the price of the Linkage order (or a better price) is no longer available on any market, then HAL would, pursuant to normal order allocation processing, execute the Remaining Order against the Exchange's quote (provided such execution would not cause a trade-through), including, if appropriate, at the Exchange's best bid or offer at the time the order was received by HAL (''Exchange Initial BBO'') against the Market-Makers that constituted the Exchange Initial BBO. HAL would effect executions against Market-Makers at the Exchange Initial BBO by preventing Market-Makers from moving Exchange Initial BBO quotes to inferior prices until a HAL order has been executed on CBOE or routed through Linkage.

The Exchange notes that, in addition to the receipt of a response to trade any portion of the exposed order, the exposure period would terminate early under the following circumstances. First, if during the exposure period the Hybrid System received an unrelated order on the opposite side of the market from the exposed order that could trade against the exposed order at the prevailing NBBO price, then the orders would trade. However, the exposure period would not terminate if a quantity remains on the exposed order after such trade. Second, if during the exposure period the Hybrid System received an unrelated order on the same side of the market as the exposed order that was priced equal to or better than the exposed order, then the exposure period would terminate and the exposed order would be processed in the same manner as an exposed order for which no response to trade was received during the full exposure period—*i.e.*, routed through the Linkage or booked, in accordance with proposed CBOE Rule 6.14(b)(i), (ii), or (iii), as appropriate. Third, if during the exposure of an order that is marketable against the Exchange Initial BBO a Market-Maker attempted to move its quote to a price that was inferior to the Exchange Initial BBO, then the exposure period would terminate and the exposed order would be processed in the same manner as an exposed order for which no response to trade was received during the full exposure period. Meanwhile, the Exchange would not permit any Market-Maker quotes to move to an inferior price until the exposed order was routed through Linkage or, if necessary, executed against Market-Makers at the Exchange Initial BBO.

Similarly, if HAL were in the allocation stage of processing an order that has not been fully executed (*i.e.*, an order that was partially ''hit'' during the exposure period and for which all responses received to that point could not fully execute the order), the allocation period would terminate early under the following circumstances. First, if the Hybrid System received an unrelated order on the opposite side of the market from the HAL order that could trade against the HAL order at the prevailing NBBO price, then the orders would trade. However, the allocation period would not terminate with respect to any quantity that did not execute against the unrelated order. Second, if the Hybrid System received an unrelated order on the same side of the market as the HAL order, then the allocation period would terminate for the unexecuted portion of the order and the unexecuted portion of the order would be processed in the same manner as an exposed order for which no response to trade was received during the full exposure period—*i.e.*, routed through the Linkage or booked, in accordance with proposed CBOE Rule 6.14(b)(i), (ii), or (iii), as appropriate. Third, if HAL were in the allocation stage of an order that is marketable against the Exchange Initial BBO and a Market-Maker attempted to move its quote to a price that was inferior to the Exchange Initial BBO while any portion of the order remained unexecuted (*i.e.*, all responses that have been received to that point cannot fully execute the order), then the allocation period would terminate and the unexecuted portion of the order would be processed in the same manner as an exposed order for which no response to trade was received during the full exposure period.

Finally, the Exchange proposes that a pattern or practice of submitting unrelated orders that cause an exposure period to conclude early and disseminating information regarding exposed orders to third parties would be deemed conduct inconsistent with just and equitable principles of trade and a violation of CBOE Rule 4.1 and other Exchange Rules.

2. Statutory Basis

The Exchange believes 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) of the Act[7] in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] When routing Linkage orders (whether P or P/A), the Exchange may choose to route only up to the available size at the NBBO as allowable under the ''trade and ship'' process of the Linkage Plan.

[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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–89 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–2005–89. 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–2005–89 and should be submitted on or before January 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7370 Filed 12–14–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52899; File No. SR–NASD–2005–136]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow Nasdaq To Issue Public Reprimand Letters

December 6, 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 17, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed this proposal pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder[4] as non-controversial, and therefore the proposed rule change is effective immediately upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify NASD Rules 4801, 4803, 4804 and 4811 to permit Nasdaq to issue public reprimand letters to listed companies for certain rule violations when a determination is made that delisting is not an appropriate sanction. Nasdaq would implement the proposed rule change upon notice by the Commission.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[5]

* * * * *

4801. Definitions

(a)–(j) No change.

(k) The term ''Staff Determination'' shall mean *either:*

(1) a written determination by the Listing Department to limit or prohibit the initial or continued listing of an issuer's securities pursuant to Rule 4804[.]*; or*

(2) a public reprimand letter in a case where the Listing Department has determined that the issuer has violated a Nasdaq corporate governance or notification listing standard (other than one required by Rule 10A–3 of the Securities Exchange Act of 1934) and that delisting is not an appropriate sanction. In determining whether to issue a public reprimand letter, the Listing Department shall consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the issuer reasonably relied on an independent advisor and whether the issuer has demonstrated a pattern of violations.

* * * * *

4803. Staff Review of Deficiency

(a) Whenever staff of the Listing Department determines that an issuer does not meet a listing standard set forth in the Rule 4000 Series, staff shall immediately notify the issuer. The issuer shall make a public announcement through the news media disclosing the receipt of this notice, including the Rule(s) upon which it was based. Prior to the release of the public announcement, the issuer shall provide such disclosure to Nasdaq's MarketWatch Department, the Listing Department, and the Hearings Department. The public announcement

[5] The proposed rule change is marked to show changes from the rules as they appear in the electronic NASD Manual available at *http://www.nasd.com.*

shall be made as promptly as possible, but not more than four business days following receipt of the notice from the Listing Department.

(1) In the case of

(A) all quantitative deficiencies from standards that do not provide a compliance period;

(B) deficiencies from the standards of Rules 4350(c) or (d) or 4360(c) or (d) where the cure period of the Rule is not applicable; or

(C) deficiencies from the standards of Rules 4350(f), (h), (i), (k), or (n), 4360(f) or (i), or 4351;

staff's notice shall provide the issuer with fifteen calendar days to submit a plan to regain compliance with the listing standard; provided, however, that the issuer shall not be provided with an opportunity to submit such a plan if review under the Rule 4800 Series of a prior Staff Determination *(other than a Staff Determination that serves as a public reprimand letter as described in Section 4801(k)(2))* with respect to the issuer is already pending. Subject to the restrictions of paragraph (b), staff may extend this deadline upon good cause shown. Upon receipt of the issuer's plan, staff in the Listing Department may request such additional information from the issuer as is necessary to make a determination regarding the likelihood that the plan will allow the issuer to meet the listing standard at issue.

(2)–(3) No change.

(b) Unless review under the Rule 4800 Series of a prior Staff Determination *(other than a Staff Determination that serves as a public reprimand letter as described in section 4801(k)(2))* with respect to the issuer is already pending, the Listing Department may grant the issuer additional time to regain compliance with a listing standard described in paragraph (a)(1); provided, however, that the additional time provided by all such exceptions shall not exceed 105 calendar days from the date of staff's notification pursuant to paragraph (a). The Listing Department shall prepare a written record describing the basis for granting any exception, and shall provide the issuer with written notice as to the terms of the exception. If the issuer does not regain compliance within the time period provided by all applicable exceptions, the Listing Department shall immediately issue a Staff Determination pursuant to Rule 4804(a). If the Listing Department determines not to grant the issuer additional time to regain compliance, the Listing Department shall immediately issue a Staff Determination pursuant to Rule 4804(a) that includes a description of the basis for denying the exception.

4804. Written Notice of Staff Determination

(a) If the Listing Department reaches a determination to limit or prohibit the initial or continued listing of an issuer's securities *or to issue a public reprimand letter*, it shall prepare and provide to the issuer a Staff Determination that shall describe the specific grounds for the determination, identify the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy, and provide notice that upon request the issuer shall be provided an opportunity for a hearing under this Rule 4800 Series.

(b) An issuer that receives a Staff Determination [to prohibit continued listing of the issuer's securities] under Rule 4804(a) shall make a public announcement through the news media disclosing the receipt of the Staff Determination, including the Rule(s) upon which the Staff Determination was based. Prior to the release of the public announcement, an issuer shall provide such disclosure to Nasdaq's MarketWatch Department, the Listing Department, and the Hearings Department. The public announcement shall be made as promptly as possible, but not more than four business days following receipt of the Staff Determination.

(c) If review under the Rule 4800 Series of a Staff Determination *described in Rule 4801(k)(1)* is pending and the Listing Department identifies the existence of one or more additional deficiencies with respect to the issuer, the Listing Department shall prepare and provide to the issuer a Staff Determination with respect to such additional deficiencies. If the new Staff Determination is issued prior to a Panel hearing with respect to the original Staff Determination, the new Staff Determination shall notify the issuer that it should present its views with respect to the additional deficiencies at the Panel hearing. If the new Staff Determination is issued after a Panel hearing with respect to the original Staff Determination, the new Staff Determination shall inform the issuer that it should present its views with respect to the additional deficiencies in writing within the period specified in the Staff Determination, to allow review of the additional deficiencies as provided under Rule 4802(d).

(d) *If review under the Rule 4800 Series of a public reprimand letter is pending and the Listing Department identifies the existence of one or more additional deficiencies with respect to the issuer, the Listing Department shall review the additional deficiencies as provided in Rule 4803.*

* * * * *

4811. Record on Review; Contents of Decisions

(a)–(d) No change.

(e) If a Panel Decision, Listing Council Decision, or decision of the NASD Board concludes that the issuer has failed to satisfy the quantitative standards or qualitative considerations set forth in the Rule 4000 Series, the decision shall either:

(1) grant an exception to the Rule 4000 Series as permitted by Rule 4802(b);

(2) limit or prohibit the initial or continued listing of the issuer's securities; or

(3) serve as a public reprimand letter in a case where the Adjudicatory Body determines that the issuer has violated a Nasdaq corporate governance or notification listing standard (other than one required by Rule 10A–3 of the Securities Exchange Act of 1934) and that delisting is not an appropriate sanction. In determining whether to issue a public reprimand letter, the Adjudicatory Body shall consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the issuer reasonably relied on an independent advisor and whether the issuer has demonstrated a pattern of violations.

(f) An issuer that receives an Adjudicatory Body decision that serves as a public reprimand letter as described in Rule 4811(e)(3) shall make a public announcement through the news media disclosing the receipt of the decision, including the Rule(s) upon which the decision was based. Prior to the release of the public announcement, an issuer shall provide such disclosure to Nasdaq's MarketWatch Department, the Listing Department, and the Hearings Department. The public announcement shall be made as promptly as possible, but not more than four business days following receipt of the decision.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed

rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

Nasdaq is proposing to allow the issuance of a public reprimand letter to a listed company upon a determination that the company has violated a Nasdaq corporate governance or notification listing standard and that delisting is not an appropriate sanction. The Commission recently approved a proposed rule change to Nasdaq's procedures associated with denying or limiting companies' initial or continued listing on Nasdaq.[6] Under these new procedures, the staff of Nasdaq's Listing Qualifications Department (''Listing Department'') provides written notice to an issuer of a deficiency when a determination has been made that a listing requirement has not been satisfied. Depending upon the nature of the deficiency, the notice takes the form of a Staff Determination, which initiates proceedings to deny or limit listing, or a deficiency letter that provides the issuer with 15 days to submit a plan to regain compliance with the listing standard.[7] If an issuer receives a Staff Determination, it may then request a hearing before a Listing Qualifications Panel (''Panel''). Upon receiving a decision from the Panel (''Panel Decision''), the issuer may appeal the decision to the Nasdaq Listing and Hearing Review Council (''Listing Council''). The final decision of the Listing Council (''Listing Council Decision'') is subject to review by the NASD Board of Directors and the Commission.

Under the current rules, a Staff Determination initiates proceedings to deny or limit listing. In monitoring the compliance of listed companies with Nasdaq's corporate governance rules, Nasdaq has identified circumstances where delisting would be disproportionate to the underlying deficiency. Nasdaq believes that the availability of a lesser sanction in the form of a public reprimand letter would ensure that investors are not harmed by the premature delisting of companies in certain limited situations where violations involve a relatively minor infraction of certain Nasdaq corporate governance standards or notice requirements.[8]

The proposed rule change, thus, would modify NASD Rule 4801(k) to provide that, depending on the nature of the deficiency, a Staff Determination may take the form of either: (1) A written determination to limit or prohibit the initial or continued listing of an issuer's securities or (2) a public reprimand letter. Under the proposed rule change, the Listing Department could issue a public reprimand letter to an issuer only upon a determination that the issuer violated a Nasdaq corporate governance or notification listing standard (other than one required by Rule 10A–3 under the Act[9]) and that delisting is not an appropriate sanction. In determining whether to issue a public reprimand letter, the Listing Department would consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the issuer reasonably relied on an independent advisor, and whether the issuer has demonstrated a pattern of violations.

Because a public reprimand letter would be considered a Staff Determination, it would be subject to appeal in the same manner as a notice to deny or limit listing. The proposed rule change also would modify NASD Rule 4804(b) to clarify that once a public reprimand letter is issued, a company would be required to make a public announcement through the news media disclosing the receipt of the letter, including the basis for the staff's determination. The timetable for the public announcement would be the same as for a deficiency or delisting letter—as promptly as possible, but not later than four business days following receipt of the public reprimand letter.

Nasdaq also proposes to amend NASD Rules 4803, 4804(c), and 4804(d) to clarify that if an appeal of a public reprimand letter is pending, an issuer would not be disqualified from receiving an exception with respect to any additional deficiencies under NASD Rule 4803. If a Staff Determination is under review when the staff issues an additional deficiency notice, the current rules do not permit the staff to provide additional time to the issuer to cure the violation or to submit a plan to regain compliance with the listing standards. Instead, staff must issue a new Staff Determination with respect to the additional deficiencies under NASD Rule 4804(c) and notify the issuer that it should present its views with respect to the new deficiencies at the Panel hearing or, if the Panel hearing has occurred, in writing. Because public reprimand letters generally would involve minor rule violations and are intended to be a lesser sanction than delisting, Nasdaq believes it would not be appropriate to deny issuers that appeal such a letter the benefit of the exception provided by NASD Rule 4803 in the event an additional deficiency is identified.

Nasdaq also proposes to modify NASD Rule 4811 to provide that a Panel Decision, Listing Council Decision, or decision of the NASD Board could, in addition to granting an exception or limiting or prohibiting the initial or continued listing of an issuer's securities, serve as a public reprimand letter. Under the proposed rule change, like the Listing Department, the appropriate Adjudicatory Body[10] could issue a public reprimand letter to an issuer only upon a determination that the issuer violated a Nasdaq corporate governance or notification listing standard (other than one required by Rule 10A–3 under the Act[11]) and that delisting is not an appropriate sanction. In determining whether to issue a public reprimand letter, the Adjudicatory Body would be required to consider the same criteria as the Listing Department. As in the case of a public reprimand letter issued by the staff, an issuer that receives a public reprimand letter issued by an Adjudicatory Body would be required to make a public announcement through the news media disclosing receipt of the letter.

Nasdaq continues to believe that delisting is the appropriate sanction for companies that fall below the quantitative listing requirements, violate

[6] *See* Securities Exchange Act Release No. 52342 (August 26, 2005), 70 FR 52456 (September 2, 2005) (SR–NASD–2004–125).

[7] Under NASD Rule 4803, upon the expiration of the 15 day period provided in a deficiency notice, the staff is required either to initiate delisting proceedings or grant an issuer up to 105 days to regain compliance with the listing standard. The staff's authority to grant an exception does not apply to quantitative listing standards that, by their terms, specify a cure period.

[8] Examples of some circumstances where Nasdaq could determine to issue a public reprimand letter include those where: (1) The staff determines that a company engaged in a pattern of failing to provide advance notice of press releases to the Nasdaq StockWatch department; (2) the staff becomes aware that a company with a December 31 fiscal year end has not held an annual meeting for the prior year as of early January, but the company has filed a proxy to hold the meeting in the next few weeks; or (3) the staff determines that an independent director resigned from the company and was replaced with another independent director, but the company did not provide prior notice to Nasdaq.

[9] 17 CFR 240.10A–3.

[10] NASD Rule 4801(b) defines ''Adjudicatory Body'' to mean a Panel, the Listing Council, or the NASD Board.

[11] 17 CFR 240.10A–3.

Nasdaq listing standards, or raise public interest concerns. Nasdaq believes, however, that the authority to issue public reprimand letters would provide Nasdaq with the ability to impose lesser sanctions on issuers in limited circumstances, when delisting is not appropriate.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[12] in general, and with section 15A(b)(6) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes that this proposed rule change would increase the objectivity and transparency of its process of sanctioning companies for violations of listing standards and would promote public confidence in Nasdaq and the quality of Nasdaq's listed companies.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposal has become effective pursuant to section 19(b)(3)(A) of the Act[14] and subparagraph (f)(6) of Rule 19b–4 thereunder[15] because the proposal: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing. The Commission notes that the proposed rule change is substantially similar to New York Stock Exchange Rule 303A.13,[16] which was previously approved by the Commission after notice and comment and, therefore, does not raise any new regulatory issues.[17] For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2005–136 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–NASD–2005–136. 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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–136 and should be submitted on or before January 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7384 Filed 12–14–05; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78*o*–3.

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] *See* Securities Exchange Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (SR–NYSE–2002–33).

[17] Rule 19b–4(f)(6) also requires a self-regulatory organization to give written notice of a proposed rule change filed pursuant to this subsection at least five business days prior to filing. Nasdaq complied with this requirement.

[18] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52921; File No. SR–NYSE–2005–84]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions to the Study Outline and Selection Specifications for the Limited Principal—Registered Options (Series 4) Examination Program

December 7, 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 30, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

administration, or enforcement of an existing rule of the self-regulatory organization pursuant to section 19(b)(3)(A)(i) of the Act [3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission revisions to the study outline and selection specifications for the Limited Principal—Registered Options (Series 4) examination program. The proposed revisions update the material to reflect changes to the laws, rules, and regulations covered by the examination, as well as modify the content of the examination program to track more closely the functional workflow of a Series 4 Limited Principal.

The revised study outline is available on the Exchange's Web site (*http://www.nyse.com*), at the NYSE, and at the Commission. However, the Exchange has omitted the Series 4 selection specifications from this filing and has submitted the specifications under separate cover to the Commission with a request for confidential treatment pursuant to Rule 24b–2 [5] under the Act.

The Exchange will announce the proposed rule change and the implementation date to its members and member organizations in an Information Memo to be published no later than 30 days after SEC Notice of this filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] 17 CFR 240.24b–2.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to section 6(c)(3)(B) [6] of the Act, which requires the Exchange to prescribe standards of training, experience, and competence for persons associated with Exchange members and member organizations, the Exchange has developed examinations, and administers examinations developed by other self-regulatory organizations (''SROs''), that are designed to establish that persons associated with Exchange members and member organizations have attained specified levels of competence and knowledge. The Exchange periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

NYSE Rule 345 (''Employees—Registration, Approval, Records'') requires member firms to register with the NYSE any individuals who regularly perform duties customarily performed by a direct supervisor of a registered representative.

NYSE Rule 720 (''Registration of Options Principals'') provides, in part, that no member organization may conduct a public options business unless those engaged in the management of the business pertaining to options are registered with and approved by the Exchange as Options Principals. Among other things, an Options Principal is required to successfully complete an examination prescribed by the Exchange for the purpose of demonstrating an adequate knowledge of options trading. The Series 4 examination is such an examination.

The Series 4 examination, an industry-wide examination, qualifies an individual to function as a Registered Options and Security Futures Principal, but only for purposes of supervising a member firm's options activities.[7]

The Series 4 examination tests a candidate's knowledge of options trading generally, the industry rules applicable to trading of option contracts, and the rules of registered clearing agencies for options. The Series 4 examination covers, among other things, equity options, foreign currency options, index options, and options on government and mortgage-backed securities.

The Series 4 examination program is shared by the Exchange and the following SROs: the National Association of Securities Dealers, Inc., the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. A committee of industry representatives, together with the staff of the Exchange and the other SROs, recently undertook a periodic review of the Series 4 examination program.

As a result of this review and as part of an ongoing effort to align the examination more closely to the supervisory duties of a Series 4 Limited Principal, the Exchange is proposing to modify the content of the examination to track the functional workflow of a Series 4 Limited Principal. More specifically, the Exchange is proposing to revise the main section headings and the number of questions on each section of the Series 4 study outline as follows: Options Investment Strategies, decreased from 35 to 34 questions; Supervision of Sales Activities and Trading Practices, increased from 71 to 75 questions; and Supervision of Employees, Business Conduct, and Recordkeeping and Reporting Requirements, decreased from 19 to 16 questions. The Exchange is further proposing revisions to the study outline to reflect the SEC short sale requirements. The revised examination continues to cover the areas of knowledge required to supervise options activities.

The Exchange is proposing these changes to the entire content of the Series 4 examination, including the selection specifications and question bank. The number of questions on the Series 4 examination will remain at 125, and candidates will continue to have three hours to complete the exam. Also, each question will continue to count one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(c)(3)(B) [8] of the Act, in that it provides for the prescription by NYSE of standards of training, experience, and competence for persons associated with NYSE members and member organizations.

[6] 15 U.S.C. 78f(c)(3)(B).

[7] A Registered Options and Security Futures Principal also must complete a firm-element continuing education program that addresses security futures and a principal's responsibilities for security futures before such person can supervise security futures activities.

[8] 15 U.S.C. 78f(c)(3)(B).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(i) [9] of the Act and Rule 19b–4(f)(1) thereunder,[10] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. The Exchange will announce the implementation date to its members and member organizations in an Information Memo to be published no later than 30 days after SEC Notice of this filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2005–84 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–84. 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–84 and should be submitted on or before January 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7367 Filed 12–14–05; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52927; File No. SR–PCX–2005–128]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Clarifying the Hours Certain Vanguard International Equity Index Funds Are Eligible To Trade on the Archipelago Exchange

December 8, 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 22, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act,[3] which rendered the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equity trading facility of PCXE. With this filing, the Exchange proposes to clarify the hours under PCXE Rule 7.34 that three exchange traded funds based on Vanguard International Equity Indices—Morgan Stanley Capital International Inc. (''MSCI'') Europe Index (ticker symbol: VGK), MSCI Pacific Index (ticker symbol: VPL), and MSCI Emerging Markets Select Index (ticker symbol: VWO) (the ''Funds'')—are eligible to trade on ArcaEx pursuant to unlisted trading privileges (''UTP''). A copy of the proposed rule change is available on the PCX Web site (*http://www.pacificex.com*), at the PCX's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 8, 2005, the Commission approved the Exchange's proposal to trade the Funds pursuant to UTP.[4] The Approval Order provided that the Funds would be eligible to trade on ArcaEx during the hours that the Intraday Indicative Value (''IIV'') is disseminated.[5] With this filing, the Exchange seeks to clarify the Funds' trading hours, proposing that the Funds should instead be eligible to trade on ArcaEx in accordance with PCXE Rule 7.34, except that the Funds will not be eligible to trade during the Opening Session (4 a.m. ET to 9:30 a.m. e.t.) unless the IIV is disseminated during that time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[6] of the Act, in general, and furthers the objectives of section 6(b)(5) of the Act,[7] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

As required by Rule 19b–4(f)(6)(iii) under the Act,[10] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change. Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[11] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative delay so that the proposed rule change can become immediately effective upon filing.

The Commission believes that waiving the 30-day operative date is consistent with the protection of investors and the public interest.[12] Specifically, the Funds are currently trading on ArcaEx in accordance with the Approval Order, and accelerating the operative date to allow the Funds to trade on ArcaEx, immediately upon effectiveness, in accordance with the proposed revised trading hours, would provide Equity Trading Permit Holders and the public greater liquidity and opportunities to trade, thereby helping to reduce trading costs and promote competition among marketplaces. For these reasons, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–PCX–2005–128 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–PCX–2005–128. 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 No. SR–PCX–2005–128 and should be submitted on or before January 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7371 Filed 12–14–05; 8:45 am]

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[4] *See* Securities Exchange Act Release No. 34–52221 (August 8, 2005), 70 FR 48222 (August 16, 2005) (SR–PCX–2005–74) (''Approval Order'').

[5] *See id.* at text accompanying note 8.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For the purpose only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52923; File No. SR–PCX–2005–79]

Self-Regulatory Organizations; Pacific Exchange, Inc., Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 2 and 3 Relating to Generic Listing Standards for Options on Narrow-Based and Micro Narrow-Based Indexes

December 7, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The PCX filed Amendment Nos. 1 [3] and 2 [4] on November 3, 2005. On December 6, 2005, the PCX filed Amendment No. 3.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposed rule change, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its index options rules in order to provide for the listing and trading of narrow-based index options pursuant to Rule 19b–4(e) under the Act.[6] The Exchange is also proposing to amend the position and exercise limits with respect to narrow-based index options, as well as a number of conforming changes in order to bring the PCX narrow-based index option rules up to date with those of other Self-Regulatory Organizations (''SROs'').[7] In addition, the Exchange proposes to adopt new generic listing standards for options on micro narrow-based indexes. The proposed rule changes are based on the rules of the International Securities Exchange, Inc. (''ISE'') [8] and the Chicago Board Options Exchange, Incorporated (''CBOE''),[9] which were approved by the Commission. The text of the proposed rule change appears below. Additions are *italicized*; deletions are [bracketed].

Rule 5—Options Contracts Traded on the Exchange

* * * * *

Definitions

Rule 5.10(b)(1)–(24)—No Change.

(25) The term ''Micro Narrow-Based Index'' means an industry or narrow-based index that meets the specific criteria provided under Rule 5.13(d).

* * * * *

Designation of the Index Narrow-Based Index Options

Rule 5.13(a) The component securities of an index underlying an index option contract need not meet the requirements of Rule 5.3. Except as set forth in subsection (b) below, the listing of a class of index options on a narrow-based index requires the filing of a proposed rule change to be approved by the SEC under Section 19(b) of the Securities Exchange Act of 1934 (''1934 Act''). [The listing of a class of index options on a new narrow-based index will be treated by the Exchange as a proposed rule change subject to filing with and approval by the Securities and Exchange Commission (''Commission'') under Section 19(b) of the Act. A rule change proposing the listing of a class of index options on a new underlying index may be designated by the Exchange as constituting a stated policy, practice or interpretation with respect to the administration of this Rule 5.13(a) within the meaning of subparagraph (3)(A) of subsection 19(b) of the Act, thereby qualifying the rule change for effectiveness upon filing with the Commission if the Exchange prefiles with the Commission a draft copy of the rule change not less than one week before it is filed, and if the Exchange proposes to commence trading in the subject class of index options not earlier than 30 days after the date of filing, and if each of the following conditions is satisfied:]

(b) Narrow-Based Index. The Exchange may trade options on a narrow-based index pursuant to Rule 19b–4(e) of the 1934 Act, if each of the following conditions is satisfied:

(1)—No Change.

(2) The index is capitalization-weighted, price weighted, [or] or equal dollar-weighted, *or modified capitalization-weighted,* and consists of ten or more component securities;

(3)–(4)—No Change.

(5) In a capitalization-weighted index *or a modified capitalization-weighted index,* the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index each have had an average monthly trading volume of at least 2,000,000 shares over the past six months;

(6) No single component security represents more than [25] *30%* of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% ([60] *65%* for an index consisting of fewer than 25 component securities) of the weight of the index.

(7)—No Change.

(8) [All Component securities are ''reported securities'' as defined in Rule 11Aa3–1 under the Exchange Act.] *Each component security must be an ''NMS Stock'' as defined in Rule 600 of Regulation NMS of the Securities Exchange Act of 1934.*

(9)–(12)—No Change.

[Maintenance Requirements Narrow-Based Index Options]

[5.13(b)]*(c) Maintenance Criteria.* The following maintenance listing standards shall apply to each class of index options originally listed pursuant to *subsection* [paragraph] [(a)]*(b)* above:

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange withdrew Amendment No. 1 on November 3, 2005.

[4] Amendment No. 2 supplemented the PCX's original filing and made certain technical corrections to the purpose section and to the proposed rule text.

[5] Amendment No. 3 makes certain technical corrections to the proposed rule text and purpose section, but did not materially impact the filing.

[6] 17 CFR 240.19b–4(e).

[7] The Exchange states that, on October 28, 2003, it filed a proposed rule change to update its broad-based and narrow-based index options rules. The Exchange further states that due to the time-sensitive circumstances at that time, the Exchange amended its filing to address only the updates to the broad-based index options rules and deleted all references to modifications to the narrow-based index options rules. At this time, the Exchange is proposing to update its narrow-based index options rules in order to bring its rules in line with other SROs. *See* Securities Exchange Act Release No. 49455 (March 22, 2004), 69 FR 16316 (March 29, 2004) (Order approving SR–PCX–2003–60). The Commission notes, however, that Rule 19b–4(e), with which the Exchange now proposes to bring its listing standards into compliance, has been in effect since December 8, 1998. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[8] *See* Securities Exchange Act Release No. 48405 (August 25, 2003), 68 FR 52257 (September 2, 2003) (SR–ISE–2003–05) (Order approving the ISE's generic listing standards for options on narrow-based indexes).

[9] *See* Securities Exchange Act Release No. 49932 (June 28, 2004), 69 FR 40994 (July 7, 2004) (SR–CBOE–2002–24) (Order approving generic listing standards for options on micro narrow-based security indexes) and Securities Exchange Act Release No. 51346 (March 9, 2005), 70 FR 12916 (March 16, 2005) (SR–CBOE–2005–08) (Order approving CBOE's proposed modified capitalization-weighted methodology as an acceptable generic listing standard for options on narrow-based index).

(1) The *requirements* [conditions] stated in *subsections* [subparagraphs] [(a)]*(b)*(1), (3), (6), (7), (8), (9), (10), (11) and (12) must continue to be satisfied, provided that the *requirements* [conditions] stated in subparagraph [(a)]*(b)*(6) must be satisfied only as of the first day of January and July in each year;

(2)–(3)—No change.

(4) In a capitalization-weighted index *or a modified capitalization-weighted index,* the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index each have had an average monthly trading volume of at least 1,000,000 shares over the past six months.

In the event of a class of index options listed on the Exchange fails to satisfy the maintenance listing standards set forth herein, the Exchange shall not open for trading any additional series of options of that class unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the Act.

(d) Notwithstanding subsection (a) above, the Exchange may trade options on a Micro Narrow-Based security index pursuant to Rule 19b–4(e) of the 1934 Act, if each of the following condition is satisfied:

(1) The Index is a security index:

(i) That has 9 or fewer component securities; or

(ii) In which a component security comprises more than 30 percent of the index's weighting; or

(iii) In which the 5 highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or

(iv) In which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50,000,000 (or in the case of an index with 15 or more component securities, $30,000,000) except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security;

(2) The index is capitalization-weighted, modified capitalization-weighted, price-weighted, share weighted, equal dollar-weighted, approximate equal-dollar weighted, or modified equal-dollar weighted;

(i) For the purposes of this Rule 5.13(d), an approximate equal-dollar weighted index is composed of one or more securities in which each component security will be weighted equally based on its market price on the index's selection date and the index must be reconstituted and rebalanced if the notional value of the largest component is at least twice the notional volume of the smallest component for fifty percent or more of the trading days in the three months prior to December 31 of each year. For purposes of this provision the ''notional value'' is the market price of the component times the number of shares of the underlying component in the index. Reconstitution and rebalancing are also mandatory if the number of components in the index is greater than five at the time of rebalancing. The Exchange reserves the right to rebalance quarterly at its discretion.

(ii) For the purposes of this Rule 5.13(d), a modified equal-dollar weighted index is an index in which each underlying component represents a pre-determined weighting percentage of the entire index. Each component is assigned a weight that takes into account the relative market capitalization of the securities comprising the index. A modified equal-dollar weighted index will be balanced quarterly.

(iii) For the purposes of this Rule 5.13(d), a share-weighted index is calculated by multiplying the price of the component security by an adjustment factor. Adjustment factors are chosen to reflect the investment objective deemed appropriate by the designer of the index and will be published by the Exchange as part of the contract specifications. The value of the index is calculated by adding the weight of each component security and dividing the total by an index divisor, calculated to yield a benchmark index level as of a particular date. A share-weighted index is not adjusted to reflect changes in the number of outstanding shares of its components. A share-weighted Micro Narrow-Based index will not be re-balanced. If a share-weighted Micro Narrow-Based Index fails to meet the maintenance listing standards under Rule 5.13(e), the Exchange will restrict trading in existing option series to closing transactions and will not issue additional series for that index.

(iv) The Exchange may rebalance any Micro Narrow-Based index on an interim basis if warranted as a result of extraordinary changes in the relative values of the component securities. To the extent investors with open positions must rely upon the continuity of the options contract on the index, outstanding contracts are unaffected by rebalancings.

(3) Each component security in the index has a minimum market capitalization of at least $75 million, except that each of the lowest weighted securities in the index that in the aggregate account for no more than 10% of the weight of the index may have a minimum market capitalization of only $50 million;

(4) The average daily trading volume in each of the preceding six months for each component security in the index is at least 45,500 shares, except that each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index may have an average daily trading volume of only 22,750 shares for each of the last six months;

(5) In a capitalization-weighted index, the lesser of: (1) The five highest weighted component securities in the index each have had an average daily trading volume of at least 90,000 shares over the past six months; or (2) the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index each have had an average daily trading volume of at least 90,000 shares over the past six months;

(6) Subject to subparagraphs (4) and (5) above, the component securities that account for at least 90% of the total index weight and at least 80% of the total number of component securities in the index must meet the requirements of Rule 5.3 applicable to individual underlying securities;

(7)(i) Each component security must be an ''NMS Stock'' as defined in Rule 600 of Regulation NMS of the Securities Exchange Act of 1934; and

(ii) Foreign securities or ADRs that are not subject to comprehensive surveillance sharing agreements do not represent more than 20% of the weight of the index;

(8) *The current underlying index value will be reported at least once every fifteen seconds during the time the index options are traded on the Exchange;*

(9) *An equal dollar-weighted index will be rebalanced at least once every quarter;*

(10) If the underlying index is maintained by a broker-dealer, the index is calculated by a third party who is not a broker-dealer, and the broker-dealer has in place an information barrier around its personnel who have access to information concerning changes in and adjustments to the index;

(11) Each component security in the index is registered pursuant to Section 12 of the Exchange Act; and

(12) Cash settled index options are designated as A.M.-settled options.

(e) The following maintenance listing standards shall apply to each class of index options originally listed pursuant to paragraph (d) above:

(1) The index meets the criteria of paragraph (d)(1) of this Rule;

(2) Subject to subparagraphs (9) and (10) below, the component securities that account for at least 90% of the total index weight and at least 80% of the total number of component securities in the index must meet the requirements of Rule 5.3;

(3) Each component security in the index has a market capitalization of at least $75 million, except that each of the lowest weighted component securities that in the aggregate account for no more than 10% of the weight of the index may have a market capitalization of only $50 million;

(4) Each component security must be an ''NMS stock'' as defined in Rule 600 of Regulation NMS of the Securities and Exchange Act of 1934; and

(5) Foreign securities or ADRs thereon that are not subject to comprehensive surveillance sharing agreements do not represent more than 20% of the weight of the index;

(6) The current underlying index value will be reported at least once every fifteen seconds during the time the index options are traded on the Exchange;

(7) If the underlying index is maintained by a broker-dealer, the index is calculated by a third party who is not a broker-dealer, and the broker-dealer has in place an information barrier around its personnel who have access to information concerning changes in and adjustments to the index;

(8) The total number of component securities in the index may not increase or decrease by more than 33⅓% from the number of component securities in the index at the time of its initial listing;

(9) Trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months;

(10) In a capitalization-weighted index and a modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index each have had an average monthly trading volume of at least 1,000,000 shares over the past six months;

(11) Each component security in the index is registered pursuant to Section 12 of the Exchange Act;

(12) In an approximate equal-dollar weighted index, the index must be reconstituted and rebalanced if the notional value of the largest component is at least twice the notional volume of the smallest component for fifty percent or more of the trading days in the three months prior to December 31 of each year. For purposes of this provision the ''notional value'' is the market price of the component times the number of shares of the underlying component in the index. Reconstitution and rebalancing are also mandatory if the number of components in the index is greater than five at the time of rebalancing. The Exchange reserves the right to rebalance quarterly at its discretion;

(13) In a modified equal-dollar weighted index the Exchange will re-balance the index quarterly;

(14) In a share-weighted index, if a share-weighted Micro Narrow-Based Index fails to meet the maintenance listing standards under Rule 5.13(e), the Exchange will not re-balance the index, will restrict trading in existing option series to closing transactions, and will not issue additional series for that index; and

(15) In the event a class of index options listed on the Exchange fails to satisfy the maintenance listing standards set forth herein, the Exchange shall not open for trading any additional series of options of that class unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the 1934 Act.

* * * * *

Position Limits for *Industry (Narrow-Based*) Index Options

[Narrow-Based Index Options]

Rule 5.16(a). *Rule 6.8 generally shall govern position limits for industry index options, as modified by this Rule 5.16. Option contracts on an industry index shall, subject to the procedures specified in subsection (c) of this rule, be subject to the following position limits:* [In determining compliance with Rule 6.8, narrow based (industry) index option contracts shall be subject to position limits determined as follows:]

(1) 18,000 [—9,000] contracts if the Exchange determines, at the time of a review conducted pursuant to *subsection* [paragraph] (b) below, that any single *underlying* stock [in the group] accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the review; or

(2) 24,000 [—12,000] contracts if the Exchange determines, at the time of a review conducted pursuant to *subsection* [paragraph] (b) below, that any single *underlying* stock [in the group] accounted, on average, for 20% or more of the index value or that any five *underlying* stocks [in the group] together accounted, on average, for more than 50% of the index value, but that no single stock in the group accounted, on average, for 30% or more of the index value, during the 30-day period immediately preceding the review; or

(3) 31,500 [—15,000] contracts if the Exchange determines that the conditions specified above, which would require the establishment of a lower limit, have not occurred.

(b) The Exchange shall *make the determinations required by subsection (a) above with respect to options on each industry index at the commencement of trading of such options on the Exchange and thereafter review the determination semi-annually on January 1 and July 1.* [determine the appropriate position limit at the time options on an index are initially opened for trading and shall review its determination semi-annually, at the same time it reviews position and exercise limits for stock options, pursuant to Rule 6.8 and Rule 6.9. If the Exchange determines after conducting its review that a higher position limit is appropriate for an index the Exchange shall increase the limit as soon as practicable. If the Exchange determines that a lower limit is appropriate for an index, the lower limit shall take effect after the expiration of the farthest term series open for trading at the time of the Exchange's review.]

(c) If the Exchange determines, at the time of a semi-annual review, that the position limit in effect with respect to options on a particular industry index is lower than the maximum position limit permitted by the criteria set forth in subsection (a), the Exchange may effect an appropriate position limit increase immediately. If the Exchange determines, at the time of a semi-annual review, that the position limit in effect with respect to options on a particular industry index exceeds the maximum position limit permitted by the criteria set forth in subsection (a), the Exchange shall reduce the position limit applicable to such options to a level consistent with such criteria; provided, however, that such a reduction shall not become effective until after the expiration date of the most distantly expiring options series relating to the industry index that is open for trading on the date of the review; and provided further that such a reduction shall not become effective if the Exchange determines, at the next semi-annual review, that the existing position limit applicable to such options is consistent with the criteria set forth in subsection (a).

(d)—No Change.

[(c)] *(e) Index* [O]option contracts [on an index] shall not be aggregated with option contracts on any stocks whose prices are the basis for the calculation of the index.

(f) Positions in reduced-value index options shall be aggregated with positions in full-value index options. For such purposes, ten (10) reduced-reduced value options shall equal one (1) full-value contract.

Position Limits for Options on Cash Settled Micro Narrow-Based Indexes

Rule 5.16(f) Methodology for Establishing Position Limits on Cash-Settled Options on Micro Narrow-Based Indexes as defined under Rule 5.10(b)(25). The position limit for a cash-settled option on a Micro Narrow-Based Index that meets the criteria under Rule 5.13(d) shall be calculated in accordance with the following methodology:

(1) Determine the Market Capitalization of the S&P 500 Index.

(2) Calculate the Notional Value of a position at the limit in the Chicago Mercantile Exchange's (''CME'') S&P 500 futures contract. The position limit for that contract is 20,000 (in all months combined) and the Index Multiplier is $250.

*Notional Value for the purposes of this rule = Index Level * Index Multiplier. Therefore, Notional Value of 20,000 S&P 500 futures contracts = 20,000 * S&P 500 Index Level * 250.*

(3) Calculate the Market Capitalization Ratio of the S&P 500 Index Market Capitalization to the Notional Value of a position limit at the limit.

Market Capitalization Ratio = Market Capitalization of the S&P 500/Notional Value of 20,000 S&P 500 futures contract positions.

(4) Determine the Market Capitalization of the Micro Narrow-Based Index by adding together the market capitalization of each underlying security component.

*(5) Determine the Notional Value of the Micro Narrow-Based Index Option (Index Level * Contract Multiplier).*

(6) Calculate the Position Limit of the Micro Narrow-Based Index using the following formula:

*Contract Position Limit on the Micro Narrow-Based Index = Market Capitalization of Micro Narrow-Based Index/(Notional Value of Micro Narrow-Based Index Option * Market Capitalization Ratio).*

(7) Establishing the Position Limit. After the applicable position limit has been determined pursuant to Rule 5.16(f)(1)–(6), round the calculated position limit to the nearest 1,000 contracts using standard rounding procedures. For position limits that are 400 or greater, but less than 1000 contracts, round up to 1,000 contracts.

Rule 5.13(d) shall not apply to any Micro Narrow-Based Index in which the applicable position limit, as calculated using Rule 5.16(f)(1)–(6), for that Micro Narrow-Based Index is less than 400 contracts.

Exemptions From Position Limits

Rule 5.17(a). Broad-based Index Hedge Exemptions—No Change.

(b) *Industry* (Narrow-Based) Index Hedge Exemptions. *The industry (narrow-based) index hedge exemption is in addition to the other exemptions available under Exchange Rules, interpretations and policies, and may not exceed twice the standard limit established under Rule 5.16. Industry* [Narrow-based (industry)] index option positions may be exempt from established position limits for each option contract ''hedged'' by an equivalent dollar amount of the underlying component securities or securities convertible into such components; provided that, in applying such hedge, each option position to be exempted is hedged by a position in at least 75% of the number of component securities underlying the index. In addition, the underlying value of the option position may not exceed the value of the underlying portfolio. The value of the *underlying* portfolio is:

(1)[(a)] the total market value of the net stock position*; and* [, less]

(2)[(b)] *for positions in excess of the standard limit, subtract the underlying market* value of:

(A)[(1)] any offsetting calls and puts in the respective index option; and

(B)[(2)] any offsetting positions in related stock index futures or options; and

(C)[(3)] any economically equivalent positions *(assuming no other hedges for these contracts exist).*

The following procedures and criteria must be satisfied to qualify for an industry index hedge exemption:

[Prior Exchange approval on the appropriate form designated by the Exchange is required. This exemption requires that both the option and stock positions be initiated and liquidated in an orderly manner. Specifically, a reduction of the option position must occur at or before the corresponding reduction in the stock portfolio position. The position in a narrow-based index option may not exceed the total of: (a) the limit established under Rule 5.16, plus (b) two times that limit (for hedged positions). The Exchange may determine, in its discretion, to grant a hedge exemption for a number of contracts that is less than the maximum number permitted under this Commentary. The Exchange may also grant other position limit exemptions under Exchange rules, and such exemptions shall be applied in addition to any exemption provided under this Commentary.]

(1) The hedge exemption account must have received prior Exchange approval for the hedge exemption specifying the maximum number of contracts that may be exempt under this Rule. The hedge exemption account must have provided all information required on Exchange-approved forms and must have kept such information current. Exchange approval may be granted on the basis of verbal representations, in which event the hedge exemption account shall within two business days, or such other time period designated by the Exchange, furnish the Exchange with appropriate forms and documentation substantiating the basis for the exemption. The hedge exemption account may apply from time to time for an increase in the maximum number of contracts exempt from the position limits.

(2) A hedge exemption account that is not carried by an OTP Holder or OTP Firm must be carried by a member of a

self-regulatory organization participating in the Intermarket Surveillance Group.

(3) The hedge exemption account shall:

(A) liquidate and establish options, stock positions, or economically equivalent positions in an orderly fashion; not initiate or liquidate positions in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes; and not initiate or liquidate a stock position or its equivalent with an equivalent index option position with a view toward taking advantage of any differential in price between a group of securities and an overlying stock index option;

(B) liquidate any options prior to or contemporaneously with a decrease in the hedged value of the portfolio which options would thereby be rendered excessive.

(C) promptly notify the Exchange of any change in the portfolio that materially affects the unhedged value of the portfolio.

(4) If an exemption is granted, it will be effective at the time the decision is communicated. Retroactive exemptions will not be granted.

(5) The hedge exemption account shall promptly provide to the Exchange any information requested concerning the portfolio.

(6) Positions included in a portfolio that serve to secure an index hedge exemption may not also be used to secure any other position limit exemption granted by the Exchange or any other self regulatory organization or futures contract market.

(7) Any OTP Holder or OTP Firm that maintains an industry index option position in such OTP Holder or OTP Firm's own account or in a customer account, and has reason to believe that such position is in excess of the applicable limit, shall promptly take the action necessary to bring the position into compliance. Failure to abide by this provision shall be deemed to be a violation of Rule 6.8 and this Rule 5.16 by the OTP Holder or OTP Firm.

(8) Violation of any of the provisions of this Rule, absent reasonable justification or excuse, shall result in withdrawal of the index hedge exemption and may form the basis for subsequent denial of an application for an index hedge exemption hereunder.

* * * * *

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 the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The 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

Purpose

1. *Designation of Narrow-Based Index Options.* The Exchange is proposing to amend PCX's index option rules to provide for the listing and trading of narrow-based stock index options pursuant to Rule 19b–4(e) under the Act.[10] The purpose of the proposal is to allow the PCX to list and trade narrow-based index options immediately without filing a proposed rule change with the Commission under Section 19(b)(3)(A) of the Act prior to trading the product, as PCX Rule 5.13(a) currently requires.[11] Current PCX Rule 5.13(a) states that the Exchange may list and trade options on a narrow-based index 30 days after the Exchange files a formal rule filing under Section 19(b)(3)(A) describing the index option, provided that the index meets the generic listing criteria set forth in PCX Rule 5.13(a)(1)–(12). However, the 19b–4(e) Adopting Release no longer requires a Section 19(b)(3)(A) filing and subsequent waiting period so long as the exchange, relying on Rule 19b–4(e) under the Act, has generic listing criteria which have been approved by the Commission. The 19b–4(e) Adopting Release indicated that products meeting the listing criteria approved by the Commission qualified for filing under Rule 19b–4(e), so long as the exchange eliminated that requirement from its existing rules.[12]

Therefore, the PCX is proposing to eliminate the Section 19(b)(3)(A) rule filing requirement from PCX Rule 5.13(a) and, instead, incorporate the provisions of Rule 19b–4(e) into the new proposed PCX Rule 5.13(b). The Exchange believes that this proposal will allow the PCX to list and trade narrow-based index options that comply with the PCX Rule 5.13(b) criteria, immediately, thereby providing a more expeditious method of offering these products in the marketplace. The Exchange represents that PCX's surveillance procedures are adequate to monitor the trading in options on narrow-based indexes as defined under Rule 5.13(b).

In addition, the Exchange proposes to amend its Rules to include the modified capitalization-weighted methodology as an acceptable generic listing criteria for options on a narrow-based index.[13] Current PCX Rule 5.13(a)(2) requires that the subject index be capitalization-weighted, price-weighted, or equal-dollar weighted and consist of ten or more component securities. The Exchange proposes to include the modified capitalization-weighted methodology as an acceptable generic listing criteria. The Exchange believes that such methodology is a widely established method of weighting securities indexes and is already in place at other SROs.[14] The Exchange represents that PCX's surveillance procedures are adequate to monitor the trading in options on narrow-based index options that meet the specified criteria in PCX Rule 5.13(b).

2. *Position and Exercise Limits.* The Exchange is proposing to amend PCX Rule 5.16 in order to increase the position and exercise limits for narrow-based index options to the levels

[10] Rule 19b–4(e)(1) provides that ''the listing and trading of a new derivative securities product by a self-regulatory organization shall 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 Exchange Act, the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class.'' 17 CFR 240.19b–4(e)(1). When relying on Rule 19b–4(e), the SRO must submit Form 19b–4(e) to the Commission within five business days after the exchange begins trading the new derivative securities products. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File S7–13–98) (''19b–4(e) Adopting Release'').

[11] The Commission notes that this procedure for listing and trading of narrow-based stock index options has been obsolete since the Commission approved the Rule 19b–4(e) Adopting Release in 1998.

[12] *See id.* at note 89.

[13] A modified capitalization weighted index is similar to a capitalization weighted index, where the components are weighted according to the total market value compared to the market value of the outstanding shares, except that an adjustment to the weighting of one or more of the components occurs. The general purposes for using this methodology are to: (1) retain the economic attributes of capitalization weighting; (2) promote portfolio weight diversification; (3) reduce index performance distortion by preserving the capitalization ranking of companies; and (4) reduce market impact on the smallest underlying components from necessary weight rebalancings. For example, indexes such as the Nasdaq-100 Index, KBW Bank Index, KBW Capital Markets Index, and the Goldman Sachs Technology Indexes are calculated using the Modified Capitalization-Weighted Methodology.

[14] *See supra* note 9.

currently in place at the ISE,[15] the CBOE,[16] the Philadelphia Stock Exchange, Inc. (''Phlx''),[17] and the American Stock Exchange LLC (''Amex'').[18] The three-tier position and exercise limit determination will remain unchanged. Specifically, the PCX proposes to increase the position and exercise limits for narrow-based index options from 9,000, 12,000 and 15,000 contracts to 18,000, 24,000 and 31,500 contracts, respectively.

In addition to providing regulatory equality, the PCX believes that an increase in the position and exercise limits for narrow-based index options is appropriate for a number of reasons. First, the Exchange believes that increased position and exercise limits for narrow-based index options may bring additional depth and liquidity, in terms of both volume and open interest, to these index options classes without significantly increasing concerns regarding inter-market manipulations or disruptions of the index options or the underlying component securities.

Second, the Exchange notes that the proposal, while increasing the position limits for narrow-based index options, continues to reflect the unique characteristics of each index option and to maintain the structure of the current three-tiered system. Specifically, under the proposal, the lowest proposed limit, 18,000 contracts, will apply to narrow-based index options in which a single underlying stock accounted on average for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option position limits. A position limit of 24,000 contracts will apply if: (1) any single underlying stock accounted, on average, for 20% or more of the index value, or (2) any five underlying stocks together accounted, on average, for more than 50% of the index value, but no single stock in the group accounted, on average, for more than 30% or more of the index value, during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option position limits. The 31,500 contract limit will apply only if the Exchange determines that the above-specified conditions requiring either the 18,000 contract limit or the 24,000 contract limit have not occurred.

3. *Narrow-Based Index Hedge Exemptions.* The Exchange proposes to amend PCX Rule 5.17(b) in order to update the Exchange's exemptions from position limits for narrow-based index options and the procedures for requesting such exemptions. The Exchange represents that the proposed exemptions are substantially identical to those of other SROs.

4. *Micro Narrow-Based Index Options.* The Exchange proposes to adopt new PCX Rules 5.13(d) and 5.16(f) in order to adopt the criteria for a new classification of narrow-based indexes, classified as ''micro narrow-based'' indexes and adopt initial listing standards, maintenance standards, and position and exercise limits for options on micro narrow-based security indexes.[19]

a. *Listing and Maintenance Standards.* The Exchange proposes to use the term ''micro narrow-based'' to distinguish this classification of narrow-based indexes from the existing ''narrow-based'' security indexes. Specifically, the Exchange proposes to list and trade options on a micro narrow-based security index, pursuant to Rule 19b–4(e) under the Act, if the index is a micro narrow-based security index: (1) That has 9 or fewer component securities; or (2) in which a component security comprises more than 30% of the index's weighting; or (3) in which the 5 highest weighted component securities in the aggregate comprise more than 60% of the index's weightings; or (4) in which the lowest weighted component securities comprising, in the aggregate, 25% of the index's weighting, have an aggregate dollar value of average daily trading volume of less than $50 million (or in the case of an index with 15 or more component securities, $30 million), except that if there are 2 or more securities with equal weighting that could be included in the calculation of the lowest weighted securities comprising, in the aggregate, 25% of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security. The proposed rule change also makes other modifications that are consistent with the standards for futures on narrow-based indices, including a requirement that all component securities of a narrow-based security index be registered pursuant to Section 12 of the Act.

The Exchange proposes to permit a micro narrow-based index to be a modified capitalization-weighted index[20] and proposes three additional index weighting methodologies for micro narrow-based indexes—modified equal-dollar weighted, approximate equal-dollar weighted, and share weighted. A modified equal-dollar weighted methodology is designed to be a fair measurement of the particular industry or sector represented by the index, but without assigning an excessive weight to one or more index components that have a larger market capitalization relative to other index components. Under this methodology, each component is assigned a weight that takes into account the relative market capitalization of the securities comprising the index. The index is subsequently rebalanced to maintain these pre-established weighting levels. In the case of an index with 9 components or less, the weight assigned to the largest component will not exceed 50% of the entire index weight. Like equal-dollar weighted indexes, the value of a modified equal-dollar weighted index will equal the current combined market value (based on U.S. primary market prices) of the assigned number of shares of each of the underlying components divided by the appropriate index divisor. A modified equal-dollar weighted will be balanced quarterly.

An approximate equal-dollar weighted index is composed of one or more securities in which each component security will be weighted equally based on its market price on the index's selection date. The index must be reconstituted and rebalanced if the notional value of the largest component is at least twice the notional volume of the smallest component for fifty percent or more of the trading days in the three months prior to December 31 of each year. For purposes of this provision, the Exchange defines ''notional value'' as the market price of the component times the number of shares of the underlying component in the index. The Exchange also states that the reconstitution and rebalancing are also mandatory if the number of components in the index changes. The Exchange also states that it will reserve the right to rebalance quarterly at its discretion.

A share-weighted index is designed to mimic the value of a portfolio consisting of two or more securities. The weight of each component security is calculated by multiplying the price of the component security by an adjustment

[15] *See* ISE Rules 2004 and 2005.

[16] *See* CBOE Rules 24.4, 24.4A, and 24.5.

[17] *See* Phlx Rule 1001A and 1002A.

[18] *See* Amex Rules 904C and 905C.

[19] *See supra* note 9.

[20] *See* Securities Exchange Act Release No. 49932 (June 28, 2004), 69 FR 40994 (July 7, 2004) (SR–CBOE–2002–24). The Exchange states that these listing and maintenance standards are consistent with the Commission's Staff Legal Bulletin No. 15: Listing Standards for Trading Security Futures Products (September 5, 2001).

factor. Adjustment factors are chosen to reflect the investment objective deemed appropriate by the designer of the index and will be published by the Exchange as part of the contract specifications.[21] The value of the index is calculated by adding the weight of each component security and dividing the total by an index divisor.[22] If a share-weighted micro narrow-based index fails to meet the maintenance listing standards under PCX Rule 5.13(e), the index would not be rebalanced by the Exchange. Instead, the Exchange would restrict options transactions to ''closing-only'' transactions and would not issue any additional series for that index.[23] Upon the expiration of the last series on that index, the Exchange will no longer calculate that index and no additional series would be listed.

Regardless of the weighting methodology, the Exchange represents that it will also reserve the right to rebalance any micro narrow-based index on an interim basis if warranted as a result of extraordinary changes in the relative values of the component securities. Proposed PCX Rule 5.13(d)(2)(iv) shall provide that, to the extent investors with open positions must rely upon the continuity of the options contracts on the index, outstanding contracts are unaffected by rebalancings. The Exchange believes that these provisions are consistent with previous rule changes approved by the Commission.[24]

Proposed PCX Rule 5.13(e) contains the maintenance standards that will apply to micro narrow-based security indexes.[25] The Exchange believes that the maintenance standards generally adhere to the Commission's Division of Market Regulation's Bulletin[26] and those standards applicable to futures in a narrow-based security index. The Exchange represents that PCX's surveillance procedures are adequate to monitor the trading in options on micro narrow-based indexes as defined under PCX Rule 5.10(b)(25).

b. *Position and Exercise Limits.* The Exchange also proposes to establish a new method for determining the applicable position limits for options on any micro narrow-based index that meets the generic listing standards under proposed PCX Rule 5.13(d). The Exchange represents that it will utilize a formulaic approach as provided in proposed PCX Rule 5.16(f), ''Position Limits for Options on Cash Settled Micro Narrow-Based Indexes'' as defined under PCX Rule 5.10(b)(25).

This new methodology is a departure from the manner in which position limits are assigned for index options under existing PCX rules. The current position limits for narrow-based index options are assigned from pre-determined tiers based on an analysis of the respective index's underlying components. Under the proposed methodology, position limits would be determined in accordance with a formula that considers a cash settled micro narrow-based index's market capitalization and contract size in relation to the market capitalization of the S&P 500 index and the contract size and position limit of a futures contract on the S&P 500 index.

In determining compliance with PCX Rule 5.18 (Exercise Limits), the applicable exercise limit for option contracts on any micro narrow-based index, as defined under proposed PCX Rule 5.10(b)(25), shall be a limit equivalent to the applicable position limits for options on that micro narrow-based index, as calculated under proposed PCX Rule 5.16(f)(1)–(7).

c. *Margin and Strikes Prices.* PCX Rule 4.16 governs the determination of the applicable margin treatment for options traded on the Exchange, including options that overlie narrow-based indexes. The existing applicable margin for options on narrow-based indexes, as provided under PCX Rule 4.16, also shall apply to micro narrow-based indexes. The interval between strike prices for options on indexes that meet the criteria under PCX Rule 5.13(d) will be no less than $2.50.

5. *System Capacity.* Finally, the Exchange reasonably believes it has adequate system capacity to support the trading of options on narrow-based and micro narrow-based indexes, based on a calculation of the Exchange's current ISCA allocation and the number of new messages per second expected to be generated by options on such index.

Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Section 6(b)(5)[28] of the Act, in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to protect investors and the public interest.[29]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. 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 *rules-comments@sec.gov*. Please include Filed No. SR–PCX–2005–79 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission,

[21] For example, an index designer might want to apply an adjustment factor in order to prevent one or a few components from dominating the weight of the index. This is similar to an adjustment factor in other types of weighting methods, such as modified capitalization weighted indexes.

[22] The index ''divisor'' is calculated to yield a benchmark index level (50, 100, 200, etc.) as of a particular date.

[23] When option series are restricted to ''closing-only'' status, the only opening transactions allowed in such a series are (i) opening transactions by market-makers executed to accommodate closing transactions of other market participants and (ii) opening transactions by an OTP Holder to facilitate the closing transactions of public customers executed as crosses pursuant to and in accordance with PCX Rule 6.47. PCX will issue a bulletin to notify OTP Holders and OTP Firms of such a situation.

[24] *See* Securities Exchange Act Release No. 42787 (May 24, 2000), 65 FR 33598 (May 24, 2000) (Commentary .03 to Amex Rule 1000 and Commentary .02 to Amex Rule 1000A).

[25] Exhibit A summarizes how the Exchange generally expects to handle certain corporate actions upon listing Micro Narrow-Based Index Options based on approximate equal-dollar weighted or share-weighted indexes.

[26] Commission Staff Legal Bulletin No. 15: Listing Standards for Trading Security Futures Products (September 5, 2001).

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] PCX clarified that it believes the proposal is consistent with Section 6(b)(5) of the Act as opposed to Section 6(b)(4) as stated in Exhibit 1 to the original proposed rule change and requested that the statutory language relating to Section 6(b)(5) of the Act provided on page 13 of the original rule filing be inserted in place of the language cited from Section 6(b)(4) in Exhibit 1. Telephone conversation between David Strandberg, Director, Issuer Services PCX and Johnna B. Dumler, Attorney, Division of Market Regulation, Commission, December 6, 2005.

100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–PCX–2005–79. 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 PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–PCX–2005–79 and should be submitted on or before January 5, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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. In particular, the Commission finds that the PCX's proposal is consistent with Section 6(b)(5) of the Act,[30] which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.[31] Specifically, the Commission notes that the proposed rule change would permit the Exchange to list and trade, pursuant to Rule 19b–4(e) under the Act,[32] options on narrow-based and micro narrow-based security indexes that meet the listing criteria set forth in PCX Rule 5.13. The Commission finds that the proposal strikes a reasonable balance between the Commission's mandates under Section 6(b)(5)[33] of the Act to remove impediments to, and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest.

The Commission believes that the proposed initial listing and maintenance standards for options on narrow-based and micro narrow-based security indexes are consistent with the standards previously established by other SROs.[34]

The Commission also believes that the proposed generic listing standards for micro narrow-based index options covering, among other things, minimum capitalization, monthly trading volume, and relative weightings of component stocks are reasonably designed to ensure that the trading market for component stocks are adequately capitalized and sufficiently liquid. In addition, the Commission notes that position limits for options on any micro narrow-based index that meets the generic listing standards of proposed PCX Rule 5.13(d) would be determined in accordance with a proposed new formula that considers the index's market capitalization and contract size in relation to the market capitalization of the S&P 500 index and the contract size and position limit of a futures contract on the S&P 500 index. The Commission believes that the proposed formula for determining position limits for micro narrow-based index options is appropriate to deter manipulation of the index. In addition, the Commission finds that the weighting methodologies employed by the PCX, including the modified equal-dollar weighted, approximate equal-dollar weighted and share-weighted methodologies, are appropriate index construction standards. The Commission notes that the Exchange represents that it reasonably believes it has sufficient operational system capacity to accommodate the PCX's listing and trading of narrow-based and micro narrow-based security indexes.

The Exchange is also charged with surveillance for the product classes, including options on narrow-based and micro narrow-based security indexes. The Exchange represents that it has developed and submitted surveillance procedures that it will use to monitor the general trading and settlement activity in narrow-based and micro narrow-based indexes to ensure full compliance with Exchange Rules and federal securities laws. The Exchange indicates that it will have complete access to information regarding trading activity in the underlying securities. The Exchange has developed new surveillance procedures specific to these products that the Commission finds adequate to monitor for manipulation in the narrow-based and micro narrow-based indexes.

The Commission's approval of the proposed generic listing standards for options on narrow-based and micro narrow-based security indexes will allow those options that satisfy these standards to start trading under Rule 19b–4(e), without constituting a proposed rule change within the meaning of Section 19(b) of the Act[35] and Rule 19b–4,[36] for which notice and comment and Commission approval is necessary. Rule 19b–4(e)[37] states that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, such 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.

The Exchange's ability to rely on Rule 19b–4(e) for these products potentially reduces the time frame for brining these securities to the market, promoting competition and providing investors with derivative securities products to meet their needs more quickly. As stated above, the Commission believes that the Exchange has adequate trading rules, procedures, listing standards, and a surveillance program for the narrow-based and micro narrow-based indexes, and thus, the Commission is approving the generic listing standards pursuant to 19b–4(e) for these product classes.

[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. *See* 15 U.S.C. 78c(f).

[32] 17 CFR 240.19b–4(e).

[33] 15 U.S.C. 78f(b)(5).

[34] *See* CBOE Rule 24.2. *See e.g.* Securities Exchange Act Release No. 51346 (March 9, 2005), 70 FR 12916 (March 16, 2005) (SR–CBOE–2005–08) (Order approving CBOE's proposed modified capitalization-weighted methodology as an acceptable generic listing standard for options on narrow-based index); *see also* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994) (SR–Amex–92–35) (SR–CBOE–93–59) (SR–NYSE–94–17) (SR–PSE–94–07) (SR–Phlx–94–10). The Commission findings in this approval order are prospective from the date of this order.

[35] 15 U.S.C. 78s(b).

[36] 17 CFR 240.19b–4.

[37] 17 CFR 240.19b–4(e).

The PCX has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the proposal is published for comment in the **Federal Register**. The Commission believes that the adoption of the proposal will enable the PCX to act expeditiously in listing options on narrow-based and micro narrow-based securities indexes in the same manner currently afforded to other options exchanges, such as the CBOE.[38] In addition, the Commission believes that the proposed rule change would remove impediments to a free and open market place by providing competition among exchanges for new products. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[39] for approving the proposed rule change, as amended, prior to the thirtieth day after publication thereof in the **Federal Register**.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, Section 6(b)(5) of the Act.[40]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[41] that the proposed rule change (SR–PCX–2005–79), as amended by Amendment Nos. 2 and 3, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[42]

Jonathan G. Katz,

Secretary.

Exhibit A

CORPORATE ACTION SUMMARY A FOR APPROXIMATELY EQUAL DOLLAR-WEIGHTED INDEXES

Type		Adjustments		Notes
Action	Company	Close price/Action	Share lot (1)	
Special Cash Dividend.	Component of Index.	Adj. Close = Prev. Close—Dividend.	Adj. Share lot = Prev. Share lot + (Prev. Share lot * Div.)/Adj. Close.	Companies contribution to index not affected by Special dividend.
Stock Split or Dividend.	Component of Index.	Adj. Close = Prev. Close/Adjustment Factor.	Adj. Round Lot = Prev. Share Lot* Adjustment Factor.	Adjustment Factor = # of New Shares for 1 Old Share.
Spin Off	Component of Index (A).	Adj. Close = Close—(Ratio * Spun off Company's Price).		Ratio = # of shares of spun off company received for every share of parent company owned. Spun off company will be added at a weight such that the index contribution of the two companies after the event is equal to the index contribution of the parent prior to the event.
	Spun Off Company (B).	ADDED	Share lot = ((Share lot A* Prev. Close A) − (Share lot A * Adj. Close A))/Close B.	
Two Components Merge in an All Stock, Cash or Combination Deal.	Remaining Companies (A).		Adj. Share Lot = Share Lot + ((B's Close * B's Share Lot))/# of remaining components)/A's Close.	All remaining companies will be adjusted using the formula to the left. Their shares will increase based on their price so as to distribute the weight of the acquired company evenly.
	Acquired Company (B).	DELETED	.....	
A Non-Component Takes Over a Component.	Acquirer (A) ...	ADDED	Share Lot = (B's Round Lot * B's Close) / A's Close.	The acquiring company will replace the acquired company. Its share lot will be set to contribute the same amount to the index as the acquired company contributed prior to the acquisition.
	Acquired Component of Index (B).	DELETED	.....	
Rights Issue ...	Component of Index.	Adj. Close = (Close + (Ratio * Subscription Price))/(1 + Ratio).	Adj. Share Lot = (Close * Share Lot)/Adj. Close.	Ratio = # of rights received for 1 share of A.

[38] *See supra* note 9.

[39] 15 U.S.C. 78s(b)(2).

[40] 15 U.S.C. 78f(b)(5).

[41] 15 U.S.C. 78s(b)(2).

[42] 17 CFR 200.30–3(a)(12).

CORPORATE ACTION SUMMARY A FOR APPROXIMATELY EQUAL DOLLAR-WEIGHTED INDEXES—Continued

Type		Adjustments		Notes
Action	Company	Close price/Action	Share lot [1]	
Extraordinary Removal.	(1) Remaining Securities (A) or (2) Replacement Company (A).	ADDED if (2)	If (1): ..... Adj. Share Lot (A) = Prev. Share lot (A) + (B's share lot * B's Close)/(# of Remaining Components * A's Close). If (2): Share lot A = (B's Share lot * B's Close)/A's Close.	Company B may be removed for any of the following reasons: Bankruptcy proceedings, Financial distress, Delisting from a primary exchange (NYSE, Nasdaq, Amex), or Illiquidity (10 consecutive no trade days). The Exchange would either: (1) Divide B's index contribution evenly between remaining components or (2) If Replacement Company A is added, Replacement Company A would be the highest ranked (as of the most recent selection date) of the remaining securities in the industry group which qualify for inclusion. The method to be utilized will be described in the index's contract specification.
	Component of Index (B).	DELETED	.....	

[1] Share lots will be rounded to the nearest hundred at rebalance. Odd lots may exist between rebalances.

CORPORATE ACTION SUMMARY B FOR SHARE-WEIGHTED INDEXES

Type		Adjustments		Notes
Action	Company	Component price change	Adjustment factor change	
Special Cash Dividend.	Component of Index.	New Close = Prev. Close—Dividend.	New Adj. Factor = (Prev. Adj. Factor * Prev. Close)/New Close.	
Stock Split or Dividend.	Component of Index.	New Close = Prev. Close/Split Ratio.	New Adj. Factor = Prev. Adj. Factor * Split Ratio.	For example, in the case of a 2-for-1 split, the Split Ratio would be 2. In the case of a 5% stock dividend, the split ratio would be 1.05.
Spin Off	Component of Index (A).	New Close = Prev. Close—(Price Adjstment due to value of spun-off company).	New Adj. Factor = (Prev. Adj. Factor * Prev. Close)/New Close.	Price Adjustment due to value of spun-off company = (Market capitalization of parent company—market capitalization of spun-off company)/number of outstanding shares of the parent company. Spun-off Company is not added.
Two Components Merge in an All Stock, Cash or Combination Deal.	Acquiring Company.	.....	New Adj. Factor = Prev. Adj. Factor + ((Acquired Company's Close * Acquired Company's Adj. Factor)/Acquiring Company's Close).	The weight of the Acquired Company is added to the weight of the Acquiring Company.
	Acquired Company.	DELETED	.....	
A Non-Component Takes Over a Component.	Non-Component Acquiring Company.	ADDED	New Adj. Factor = ((Acquired Company's Close * Acquired Company's Adj. Factor)/Acquiring Company's Close).	Non-Component Acquiring Company added to index at Acquired Company's weight.
	Acquired Component of Index.	DELETED	.....	
Rights Offering	Component of Index.	New Close = Prev. Close—Price Adjustment due to value of offering.	New Adj. Factor = (Prev. Adj. Factor * Prev. Close)/New Close.	Price Adjustment due to value of rights offering = (market capitalization of parent company—market capitalization of rights)/number of outstanding shares of the parent company.
Extraordinary Removal.	Index Component.	DELETED	The Adjustment Factors for each remaining component will be increased to reflect an equal distribution of the weight of a deleted component.	An Index Component will be removed for bankruptcy proceedings, financial distress, or delisting from a national market (NYSE, Nasdaq, Amex).

[FR Doc. E5–7372 Filed 12–14–05; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52924; File No. SR–Phlx–2005–74]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Elimination of Commentary .01, Guideline 5 to Phlx Rule 1010

December 7, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on December 5, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Phlx filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate Commentary .01, guideline 5 to Phlx Rule 1010 (''Withdrawal of Approval of Underlying Securities''), so that an underlying security may be deemed to meet the Exchange's requirements for continued approval for options transactions where an issuer has failed to make timely reports pursuant to the Act.

The Exchange also proposes as a matter of housekeeping to amend Commentary .01, guideline 6 to Phlx Rule 1010 and Phlx Rule 1009(a)(1)(ii) to substitute the term ''NMS stock'' for the previous description of a national market system security, for consistency with Regulation NMS.[5] The text of the proposed rule change is below. Proposed new language is *italicized*, and deleted language is in brackets.

* * * * *

Rule 1010 Withdrawal of Approval of Underlying Securities

Commentary:

.01 The Board of Governors has established guidelines to be considered by the Exchange in determining whether an underlying security previously approved for Exchange option transactions no longer meets its requirements for the continuance of such approval. Absent exceptional circumstances, with respect to items 1, 2, 3, or 4 listed below, an underlying security will not be deemed to meet the Exchange's requirements for continued approval whenever any of the following occur:

1. through 4.—No Change.

5. [The issuer has failed to make timely reports as required by applicable requirements of the Securities Exchange Act of 1934, and such failure has not been corrected within 30 days after the date the report was due to be filed.

6.] *The underlying security ceases to be an ''NMS stock'' as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934.* [The issue, in the case of an underlying security that is principally traded on a national securities exchange, is delisted from trading on that exchange and neither meets NMS criteria nor is traded through the facilities of a national securities association, or the issue, in the case of an underlying security that is principally traded through the facilities of a national securities association, is no longer designated as an NMS security].

[7]*6.* If an underlying security is approved for options listing and trading under the provisions of Commentary .05 of Rule 1009, the trading volume and price history of the original security (as therein defined) prior to but not after the commencement of trading in the restructure security (as therein defined), including ''when issued'' trading, may be taken into account in determining whether the trading volume and market price requirements of paragraph (3) and (4) of this Commentary .01 are satisfied provided, however, that in the case of a Restructure Security approved for options listing and trading under paragraph (d) of Commentary .05 under Rule 1009, such trading volume requirements must be satisfied based on the trading volume history of the Restructure Security.

Commentaries .02 to .10—No Change.

* * * * *

Rule 1009 Criteria for Underlying Securities

(a) Underlying securities in respect of which put or call option contracts are approved for listing and trading on the Exchange must meet the following criteria:

(1) The security must be duly registered and *be an ''NMS stock'' as defined in Rule 600 of Regulation NMS* [(i) listed on the national securities exchange; or (ii) traded through the facilities of a national securities association and is a reported national market system (''NMS'') security as defined in Rule 11Aa3–1] under the Securities Exchange Act of 1934;

(2) No Change.

Remainder of Rule 1009—No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate Phlx Commentary .01, guideline 5 to Phlx Rule 1010. Phlx Commentary .01 sets forth the guidelines to be considered by the Exchange in determining whether an underlying security previously approved for options trading continues to be appropriate. Specifically, Phlx Rule 1010 and related Phlx Commentary .01 provide that if an underlying security previously approved by the Exchange does not meet the then current requirements for continuance, the Exchange will not open for trading additional series of such options class and may also limit any new opening transactions in those options series that have previously been opened for trading.

Phlx Commentary .01, guideline 5 in particular provides that an underlying security will not be deemed to meet the Exchange's requirements for continued approval whenever:

5. The issuer has failed to make timely reports as required by applicable requirements of the Securities Exchange Act of 1934, and such failure has not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

been corrected within 30 days after the date the report was due to be filed.

The Exchange proposes to eliminate this provision based on its experience in recent years applying this requirement. The Exchange believes that this provision limits the ability of investors to use options to hedge existing equity positions and is not necessary given the entire application of Phlx Commentary .01. In addition, the Exchange notes that the underlying security will continue to trade on national securities exchanges, regardless of the late filings or reports required by the Act.

The Exchange submits that Phlx Commentary .01, guideline 5 potentially harms investors and the marketplace by preventing the use of new options series to hedge positions in the underlying securities of companies that fail to make timely reports required by the Act. The Exchange states that this restriction is inconsistent with the underlying equity markets, whereby failure to properly file reports under the Act does not result in a similar trading restriction. Accordingly, the Exchange maintains that Phlx Commentary .01, guideline 5 limits the ability of investors who may wish to hedge their underlying stock positions with new options series, at a time when the ability to hedge may be particularly important.

The Exchange believes that Phlx Commentary .01, guideline 5 has substantially outlived any usefulness and now serves to unnecessarily burden and confuse the investing public. Phlx Commentary .01, guideline 5 to Phlx Rule 1010 has been a part of the Exchange's continued listing criteria since about late 1976, shortly after the listing and trading of standardized options commenced on the Exchange. In contrast to 1976, the Exchange states that the standardized options market today is a mature market largely consisting of sophisticated investors with significant access to information, such as information on the failure of a company to make timely reports under the Act. Therefore, the Exchange contends that there is no reason to limit the opportunity for investors to execute transactions in options classes (including new series within those classes) simply because a company is not timely in filing its reports under the Act, when investors are not similarly restricted from purchasing or selling shares in the underlying security.

Moreover, the limitation on new options series imposed pursuant to Phlx Commentary .01, guideline 5 causes considerable confusion and frustration in the options marketplace because it only restricts the trading of new series in a given option class. The Exchange has found that Phlx Commentary .01, guideline 5 tends to confuse both public customers and market professionals, who find themselves restricted from trading any new options series in a given class at the same time that trading occurs in pre-existing options series or the underlying stock itself. Still further confusion can arise in this process because the Exchange maintains that the Phlx, as well as the other options exchanges, have no independent means to verify whether any of the listed securities underlying options traded at the Exchange have failed to meet their reporting requirements under the Act. Accordingly, the options exchanges, including the Phlx, must rely on other self-regulatory organizations or third parties for such notification, which is always difficult to monitor, particularly since such third-party reports are sometimes delayed or inaccurate.[6]

The Exchange further submits that Phlx Commentary .01, guideline 5 is unnecessary for the protection of investors and the marketplace. For example, underlying securities that are delisted or fail to be NMS securities are no longer approved for options trading under existing rules. Specifically, existing Phlx Commentary .01, guideline 6 to Phlx Rule 1010 provides that an underlying security will no longer be approved for options transactions when:

6. The issue, in the case of an underlying security that is principally traded on a national securities exchange, is delisted from trading on that exchange and neither meets NMS criteria nor is traded through the facilities of a national securities association, or the issue, in the case of an underlying security that is principally traded through the facilities of a national securities association, is no longer designated as an NMS security.

The Phlx believes a better approach is to limit or suspend options trading when the underlying security itself has been delisted and not subject the process to the inherent uncertainty of a failure of the underlying company to timely file its reports under the Act. The Exchange accordingly submits that current Phlx Commentary .01, guideline 5 should be eliminated.[7]

Finally, as a matter of ''housekeeping,'' the Exchange is amending Phlx Commentary .01, guideline 6 to Phlx Rule 1010 and Phlx Rule 1009(a)(1)(ii) to substitute ''NMS stock'' for the term ''national market system security,'' for consistency with Regulation NMS. Both of these provisions include a requirement that the underlying security must be a national market system security (''NMS security''). As part of the recently adopted Regulation NMS, among other things, the Commission revised the definition of an ''NMS security.''[8] Specifically, Rule 600(b)(46) under Regulation NMS defines an NMS security as ''any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.'' Rule 600(b)(47) under Regulation NMS also defines an ''NMS stock'' as any NMS security other than an option. As such, Phlx Commentary .01, guideline 6 to Phlx Rule 1010 and Phlx Rule 1009(a)(1)(ii) will be amended to reflect these new terms.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[6] The Exchange notes that it has procedures in place to monitor when an underlying security previously approved for option transactions ceases to trade on or is delisted from its primary listed market. Exchange staff monitors: (1) The daily list services issued by the primary listing markets (such as the New York Stock Exchange, Inc., American Stock Exchange LLC, and The Nasdaq Stock Market, Inc.); (2) press releases issued by the primary listing markets and the news wires; and (3) information circulars issued by the primary listing markets. In the event of a delisting of the underlying security from its primary listed market, Phlx will cease opening new series of options in such security and allow the existing series of options to expire. Additionally, if the underlying security has been halted or suspended in the primary market, the Exchange may halt trading in the option class pursuant to Phlx Rule 1047 or halt trading pursuant to Phlx Rule 133.

[7] The reference to guideline 6 in the prior paragraph, and the word current in the final sentence of this paragraph, were added pursuant to a telephone conference between Jurij Trypupenko, Director, Exchange, and David L. Orlic, Attorney, Division of Market Regulation, Commission, on December 7, 2005.

[8] *See* supra note 5.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Phlx has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[13] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. The Exchange requests that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay so the proposed rule change can be implemented immediately. The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2005–74 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR-Phlx-2005–74. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–74 and should be submitted on or before January 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7364 Filed 12–14–05; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Mandatory Declassification Review Requests

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This notice identifies the office in the U.S. Small Business Administration to which mandatory declassification review requests shall be addressed in accordance with applicable laws. This notice benefits the public in advising them where to send such requests for declassification review.

ADDRESSES: Requests must be addressed to: Director, Office of Security Operations, Office of Inspector General, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Linda M. Roberts, Director, Office of Security Operations, Office of Inspector General, at (202) 205–6223.

SUPPLEMENTARY INFORMATION: Pursuant to Classified National Security Information Directive No. 1 (32 CFR, Parts 2001 and 2004), issued by the Information Security Oversight Office, the U.S. Small Business Administration is required to advise the public of the address that Mandatory Declassification Review requests pertaining to the U.S. Small Business Administration may be sent. This notice fulfills that requirement.

Authority: 32 CFR 2001.33.

Dated: December 8, 2005.

Peter McClintock,

Deputy Inspector General.

[FR Doc. E5–7346 Filed 12–14–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5244]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Middle East Partnership Initiative Study of the United States Institute for Undergraduate Student Leaders

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/USS–06–MEPI–4.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: January 31, 2006.

Executive Summary: The U.S. Department of State (DoS), through the Bureau of Educational and Cultural Affairs (ECA) and the Office of the Middle East Partnership Initiative (MEPI) invites proposal submissions for the design and implementation of a six-week Study of the United States (U.S.) Institute for undergraduate students from the Middle East and North Africa entitled: Middle East Partnership Initiative Study of the United States Institute for Undergraduate Student Leaders. The Bureau anticipates awarding two separate assistance awards to support two institutes for undergraduate student leaders. Prospective host institutions are limited to submitting only one proposal to conduct one of the two institutes.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation. Funding for these institutes is being provided by the Department of State's Middle East Partnership Initiative (MEPI). MEPI is the U.S. Government's primary policy and programmatic tool to implement democratic reform in the Middle East and North Africa. This project addresses the MEPI goals of fostering political reform, educational reform and women's empowerment in MEPI partner countries.

Based on a group of 20–22 participants, the total DoS-funded budget (program and administrative) for each of the MEPI Study of the United States Institutes for Undergraduate Student Leaders will not exceed $418,000. Potential host institutions should attempt to maximize cost-sharing in all facets of the program, and try to engage the U.S. private sector, including foundations and corporations, for support. Applicants must submit a comprehensive budget for the entire program. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and availability of U.S. Government funding.

Purpose

The two MEPI Study of the United States Institutes for Undergraduate Student Leaders should each provide a multinational group of 20 first and second year undergraduate student leaders from selected countries in the Middle East and North Africa with a uniquely designed program that focuses on leadership development. Both institutes will take place over the course of six weeks during the summer of 2006, and will consist of a challenging academic program, as well as educational travel to other regions of the United States to illustrate the various topics explored in class. With leadership training as its main objective, the Institute will provide the students with opportunities to examine the concept, history and manifestation of leadership in American society through classroom activities, site visits and regular community service projects. Under the direction of the MEPI Office, the students will also be invited to take part in an alumni conference and follow-on activities in their home countries after the conclusion of the program in the United States. Participants in the program will be nominated by U.S. embassies and consulates in Algeria, Bahrain, Egypt, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya (if possible, depending on the feasibility of recruitment and travel), Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, the United Arab Emirates, the West Bank and Gaza, and Yemen. (Israeli participants will be Arab-Israeli only.) Participants will be selected by the ECA Study of the United States Branch in consultation with the Office of the Middle East Partnership Initiative.

The Bureau is seeking detailed proposals for each of the two institutes from U.S. liberal arts colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations.

Each MEPI Study of the United States Institute for Undergraduate Student Leaders should be designed as an intensive academic program with an educational travel component that is organized through a carefully integrated series of panel presentations, seminar discussions, debates, individual and group activities, lectures and reading assignments, as well as local site visits, regional educational travel, and participation in community activities. The Institute must not simply replicate existing or previous lectures, workshops, or group activities designed for American students. Rather, it should be a specially designed and well-integrated seminar that imaginatively combines lectures, discussions, readings, debates, local site visits and regional travel into a coherent whole.

Within the framework of ''leadership,'' the academic program and educational travel component for the institutes should focus on the role and influence of democratic values in U.S. society, including the rule of law, individual rights, freedom of expression, equality, diversity and tolerance. Current political, social and economic issues and debates should be examined. Civic responsibility, volunteerism, team building, effective communication and problem-solving skills should also be addressed, and hands-on activities directly related to these ideas should be included in the institute agenda.

Each Institute will begin with a two-day orientation in Washington, DC. Following the orientation, participants in the MEPI Study of the United States Institutes will spend approximately five weeks at the host institution in the academic residency program, approximately ten days on the educational travel component, and two to three days in Washington, DC at the conclusion of the Institute. The educational travel component should directly complement the academic residency program.

Each Institute should provide the participants with continuous opportunities to meet and have substantial interaction with American citizens from a variety of ethnic, cultural and religious backgrounds, particularly with those in their peer group. In addition, the institute participants should be afforded opportunities to speak to appropriate student and civic groups about the societies and cultures of their home countries.

Applicants for the MEPI Study of the United States Institutes for Undergraduate Students Leaders should take into consideration that an alumni workshop for the institute participants will take place at a site in the Middle East or North Africa region within six-twelve months of the U.S.-based Institute. DoS will assume principal responsibility for organizing and hosting the alumni workshop in consultation with overseas embassies and the U.S. host institutions. While host institutions should not provide a detailed strategy for a follow-on workshop, they should

be prepared to assist in the planning and implementation of the workshop.

Applicants are encouraged to design thematically coherent programs in ways that draw upon the particular strengths, faculty and resources of their institutions, as well as upon the nationally recognized expertise of scholars and other experts throughout the United States.

All Study of the United States Institutes, regardless of their particular thematic focus, seek to give participants a multi-dimensional view of U.S. society and institutions through a program that reflects a broad and balanced range of perspectives. In addition to interaction with scholars and practitioners in a variety of fields, participants should have opportunities for discussions with ordinary Americans (particularly those within their own age group) through activities such as weekend homestays or dinners with local families, community service, and civic organization meetings.

Each Institute should designate an academic director who will be present throughout the program to ensure the continuity, coherence and integration of all aspects of the academic program, including the study tour. In addition to the academic director(s), an administrative director or coordinator should be assigned to oversee all student support services, including supervision of the program participants, budgetary, logistical, and other administrative arrangements. It is also important that the grantee institution retain highly qualified mentors and escorts who exhibit cultural sensitivity, an understanding of the program's objectives, and a willingness to engage with the participants throughout the program. This includes accompanying students to classroom sessions, residing with them in dormitories or other accommodations, escorting them during the educational travel component, etc.

To fulfill the goals of this program, it is important that grantee institutions retain highly qualified mentors and escorts for the students. These mentors and escorts should exhibit cultural sensitivity, an understanding of the program's objectives, and a willingness to engage with the participants for the duration of the Institute. This includes accompanying the students to classroom sessions, residing with them in dormitories or other accommodations, escorting them during the educational travel component, etc.

Participants As specified in the Project Objectives, Goals and Implementation (POGI) guidelines in the solicitation package, participants in the MEPI Study of the United States Institutes should be highly motivated and exemplary first and second year undergraduate students selected from colleges, universities and teacher training institutions in Algeria, Bahrain, Egypt, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, the United Arab Emirates, the West Bank and Gaza, and Yemen who demonstrate leadership through academic work, community involvement, and extracurricular activities.

Participants will be identified and nominated by U.S. embassies and consulates in the candidates' home countries, with final selection made by the Study of the United States Branch at ECA in consultation with representatives of the MEPI office. Every effort will be made to select a balanced mix of male and female participants, as well as students who represent a mix of religious and cultural backgrounds.

Please note: The level of English among the students may vary. The host institutions will be required to prepare lectures and discussions that meet the highest academic standards while using language appropriate for students for whom English is their second or third language.

U.S. embassies and consulates overseas will make a particular effort to recruit participants who have had little or no prior experience in the United States or elsewhere outside their home countries. They will also seek candidates who are from non-elite or underprivileged backgrounds and from both rural and urban areas. Nominees should be willing and able to fully participate in an intensive academic program that includes educational travel, and in community service activities. All participants will be selected largely on the basis of their demonstrated leadership capacity, and must return home at the conclusion of the Institute to continue their university studies in the fall of 2006.

Please note: Special sensitivity will be required on the part of the host institution to the cultural traditions and religious practices of the institute participants who will represent a variety of Muslim and other religious traditions. Special requirements and restrictions regarding diet, daily worship, housing and medical care should be considered. The Bureau will provide guidance and assistance to the host institution, as needed.

Program Dates

Each Institute should be a maximum of 47 days in length (including participant arrival and departure days). It is anticipated that the institutes for undergraduate student leaders will begin in early July 2006.

Program Guidelines

It is essential that proposals provide a full, detailed and comprehensive narrative describing the objectives of the Institute; the title, scope and content of each session; planned site visits; and how each session relates to the overall institute theme. A syllabus must be included that explains the subject matter for each panel discussion, group presentation, lecture or other activity. The syllabus should also confirm or provisionally identify proposed speakers and session leaders, and clearly show how assigned readings will advance the goals of each section. A calendar of all program activities must be included in the proposal, as well as a description of plans for public and media outreach in connection with the Institute.

Please note: The Branch for the Study of the United States will assume the following responsibilities for the institutes: participation in the selection of participants; conducting a pre-program orientation; oversight of the institutes through one or more site visits; debriefing participants in Washington, DC, at the conclusion of the Institute; engaging in follow-on communication with the participants after they return to their home countries. The Branch may require changes in the content or scope of activities of the Institute, either before or after the grant is awarded. The recipient will be required to obtain approval of significant agenda/syllabus changes in advance of their implementation.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: FY–2006.

Approximate Total Funding: $836,000.

Approximate Number of Awards: 2.

Approximate Average Award: $399,000.

Floor of Award Range: $380,000.

Ceiling of Award Range: $418,000.

Anticipated Award Date: Pending availability of funds, March 31, 2006.

Anticipated Project Completion Date: September 30, 2007.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information:

III.1. *Eligible applicants:* Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. *Cost Sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs. When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. *Other Eligibility Requirements:* Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

IV. *Application and Submission Information:*

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. *Contact Information to Request an Application Package:*

Please contact the Branch for the Study of the United States, ECA/A/E/USS, Room 314, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547; tel. (202) 453–8536; fax (202) 453–8533; e-mail: *caseysd@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/USS–06–MEPI–4.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Sheila Casey and refer to the Funding Opportunity Number ECA/A/E/USS–06–MEPI–4 on all other inquiries and correspondence.

IV.2. *To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at: http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3. *Content and Form of Submission:* Applicants must follow all instructions in the Solicitation Package. The original and ten (10) copies of the application should be sent per the instructions under IV.3f. ''Submission Dates and Times section'' below.

IV.3a. *You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government.* This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. *All proposals must contain an executive summary, proposal narrative and budget.*

Please Refer to the Solicitation Package. It contains the mandatory PSI document, as well as the POGI document for additional formatting and technical requirements.

IV.3c. *You must have nonprofit status with the IRS at the time of application.* If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. *Please take into consideration the following information when preparing your proposal narrative:*

IV.3d.1. *Adherence To All Regulations Governing the J Visa:* The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Bureau will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547.

Telephone: (202) 203–5029.

FAX: (202) 453–8640.

Please refer to Solicitation Package for further information.

IV.3d.2. *Diversity, Freedom and Democracy Guidelines:* Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. *Program Monitoring and Evaluation:* Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) (identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e.1. *Applicants must submit a comprehensive budget for the entire program.* Awards may not exceed $418,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. *Allowable costs for the program include the following:*

(1) Institute staff salary and benefits.

(2) Participant housing and meals.

(3) Participant travel.

(4) Textbooks and educational materials.

(5) Speaker honoraria.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. *Submission Dates and Times:*

Application Deadline Date: January 31, 2006.

Explanation of Deadlines: Due to heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and ten (10) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/USS–06–MEPI–4, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public

Affairs Section(s) at the U.S. embassy(ies) for its (their) review.

Applicant institutions or organizations may submit only one (1) proposal to conduct one (1) MEPI Study of the United States Institute for Undergraduate Student Leaders.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of Program Idea/Plan:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity.

2. *Ability to Achieve Overall Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Support for Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings and resource materials).

4. *Evaluation and Follow-Up:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

5. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

6. *Institutional Track Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 *Administrative and National Policy Requirements:*

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. *Reporting Requirements:* You must provide ECA with a hard copy original plus one (1) copy of the final program and financial report no more than 90 days after the expiration of the award.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. *Program Data Requirements:*

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and academic major of all participants.

(2) Itineraries of international and domestic travel for all participants, providing dates of travel and cities in which any exchange experiences take place. Final itineraries must be received by the ECA Program Officer at least three work days prior to the participants' arrival in the United States.

VII. Agency Contacts

For questions about this announcement, contact: Sheila Casey, Branch for the Study of the United States, ECA/A/E/USS, Room 314, ECA/A/E/USS–06–MEPI–4, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547; tel. (202) 453–8536; fax (202) 453–8533, e-mail: *caseysd@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/USS–06–MEPI–4.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: December 7, 2005.

Dina Habib Powell,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E5–7390 Filed 12–14–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5245]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Religion and Society: A Dialogue

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/NEA–AF–06–26.

Catalog of Federal Domestic Assistance Number: 00.000.

Application Deadline: February 16, 2006.

Executive Summary

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs, U.S. Department of State, announces a special competition for two to three grants to support international exchange projects under the rubric ''Religion and Society: A Dialogue.'' Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to develop and implement a multi-phased exchange to engage influential clerics, religious scholars and community leaders from countries with significant Muslim populations in dialogue designed to educate participants about the scholarship and practice of Islam in the United States and the world and the compatibility of religious practice and democratic social and political values and structures.

Authority

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Overview

The Office of Citizen Exchanges consults with and supports American public and private nonprofit organizations in developing and implementing multi-phased, often multi-year, exchanges of professionals, community leaders, scholars and academics, public policy advocates, non-governmental organization activists, etc. These exchanges address issues of vital importance to the United States and to other countries; they promote focused, substantive, and cooperative interaction among counterparts; and they entail both theoretical and experiential learning for all participants. A primary goal is the development of sustained, international, institutional and individual linkages. In addition to providing a context for professional development and collaborative problem-solving, these projects are intended to introduce foreign participants and their American counterparts to one another's political, social, and economic structures, facilitating improved communication and enhancing mutual understanding. Desirable components of an exchange may be local citizen involvement and activities that orient foreign participants to American society and culture.

The initiative ''Religion and Society: A Dialogue'' will support two to three grants facilitating the international exchange of American and non-American clerics, religious scholars, and community leaders—influential opinion leaders recognized for their ability to communicate in scholarly writing, through sermons, or by virtue of a position of community leadership. The objectives of the exchange are (1) to enhance the non-American participants' understanding of the place of religion and serious religious study, particularly Islam, in American life; (2) to provide a forum for examination and discussion of the compatibility of religious practice and democratic social and political values and structures, the benefits produced by coexistence among religious communities, and the practice of Islam in a multi-cultural, multi-religious context; and (3) to broaden the understanding of American scholars, clerics, and laypersons of the place of Islam in non-American societies.

Competitive program models would outline activities for a two-year exchange, including: Consultations and participant selection in participating countries by American professionals (selection coordinated with U.S. Embassies); study trips of up to 28 non-American scholars, clerics, and community leaders to the United States for several weeks (approximately 14 participants in two separate tours, one each year); and final consultations and workshops in the countries of origin of non-American participants by up to 14 American scholars, etc., Muslim and non-Muslim (approximately 7 American participants in each of two separate tours). Study tours in the United States would include: Meetings at Islamic centers, discussions with American Muslim and non-Muslim counterparts, familiarization with major religious libraries and archives, particularly those holding significant Islamic collections, discussions with leaders and members of religious and secular institutions that represent America's guarantee of human dignity and freedom of worship, and participation in scholarly (and possibly public) workshops and seminars. Abroad, Americans would participate in workshops and seminars, consult with local clerics, scholars, and community leaders, etc.

Participants may be drawn from any relevant country, worldwide. Proposals should provide a persuasive rationale for the country or countries included in the exchange. The Office of Citizen Exchanges encourages applicants to be creative in planning project implementation. Activities may include both theoretical orientation and experiential, community-based initiatives designed to achieve objectives. Applicants should, in their proposals, identify any partner organizations and/or individuals inside or outside the U.S. with which/whom

they are proposing to collaborate and justify the collaboration on the basis of experience, accomplishments, etc.

Selection of Participants

Applications should include a description of a merit-based, focused participant selection process. Applicants should anticipate consulting with the Public Affairs Sections of U.S. Embassies in selecting participants, with the Embassy retaining the right to nominate participants, to advise the grantee regarding participants recommended by other entities, and to have final approval of the list of participants identified.

Public Affairs Section Involvement

The Public Affairs Sections (PAS) of the U.S. Embassies often play an important role in project implementation. PAS will initially evaluate project proposals and may, in consultation with the grantee organization, coordinate planning with the grantee organization and in-country partners, facilitate in-country activities, nominate participants and vet grantee nominations, observe in-country activities, and debrief participants. PAS will also evaluate project impact.

Though project administration and implementation are the responsibility of the grantee, the grantee is expected to inform the PAS in participating countries of its operations and procedures and to coordinate with PAS officers in the development of project activities. The PAS should be consulted regarding country priorities, political and cultural sensitivities, security issues, and logistic and programmatic issues.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: 2006.

Approximate Total Funding: $1,000,000, to be allocated among two to three grant awards.

Approximate Number of Awards: Two to three.

Anticipated Award Date: Pending availability of funds, August 31, 2006.

Anticipated Project Completion Date: July 31, 2008 to May 31, 2009.

Projects under this competition may range in length from two to three years, depending on the number of project components, the country/region targeted, and the extent of the evaluation plan proposed by the applicant. The Office of Citizen Exchanges strongly encourages applicant organizations to plan enough time after project activities to measure project outcomes. Please refer to the Program Monitoring and Evaluation section, item IV.3d.3 below, for further guidance on evaluation.

III. Eligibility Information

III.1. *Eligible applicants:* Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. *Required Cost Sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs. Cost sharing is an important element of the ECA-grantee institution relationship, and it demonstrates the implementing organization's commitment to the program. Cost sharing is included as one criterion for grant proposal evaluation. Applicants are strongly encouraged to cost share a portion of overhead and administrative expenses. Cost-sharing, including contributions from the applicant, proposed in-country partner(s), and other sources should be included in the budget request. Proposal budgets that do not reflect cost sharing will be deemed not competitive under the Cost Effectiveness and Cost Sharing criterion (item V.1, below).

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. *Other Eligibility Requirements:* (a.) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding two to three grants, in an amount up to $500,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition.

(b.) Technical Eligibility: Proposals must comply with the requirements outlined in this Request for Grant Proposals and accompanying Proposal Submission Instructions in order to be considered technically eligible for consideration in the review process.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package: The Application Package comprises the Proposal Submission Instruction (PSI) document, consisting of required application forms and standard guidelines for proposal preparation. The Solicitation Package may be downloaded from: *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.2 To receive a hard copy of the Application Package via U.S. Postal Service, contact Thomas Johnston, Office of Citizen Exchanges, ECA/PE/C/NEA–AF, Room 216, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, Telephone (202) 453–8162; Fax (202) 453–8168; E-mail *JohnstonTJ@state.gov*. Please refer to Funding Opportunity Number ECA/PE/C/NEA–AF–06–26 on all inquiries and correspondence.

IV.3. *Content and Form of Submission:* Applicants must follow all instructions in the Solicitation Package. The original and ten copies of the application should be sent per the instructions under IV.3f. ''Submission Dates and Times section,'' below.

IV.3a. Applicants are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that the DUNS number is included in the appropriate box of the SF—424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative

and budget. Please refer to the Application Package, containing the mandatory Proposal Submission Instructions (PSI) document, for additional formatting and technical requirements.

IV.3c. Applicants must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 *Adherence To All Regulations Governing The J Visa.* The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR 62 et seq.

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss its record of compliance with 22 CFR 62 et. seq., including the oversight of its Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 203–5029. FAX: (202) 453–8640.

IV.3d.2 *Diversity, Freedom and Democracy Guidelines.* Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the fullest extent feasible.

IV.3d.3. *Program Monitoring and Evaluation.* Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes represent specific results a project is intended to achieve and are usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and

partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criterion.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire project. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Budgets that limit administrative costs to approximately 25% of the funding sought from ECA will be given priority consideration.

IV.3e.2. Allowable costs for the program include the following:

1. *Travel.* International and domestic airfare; visas; transit costs; ground transportation costs. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J–1 visas for participants in Bureau sponsored programs.

2. *Per Diem.* For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. Domestic per diem rates may be accessed at: *http://policyworks.gov/org/main/mt/homepage/mtt/perdiem/perd03d.html.* ECA requests applicants to budget realistic costs that reflect the local economy and do not exceed Federal per diem rates. Foreign per diem rates can be accessed at: *http://www.state.gov/m/a/als/prdm/html.*

3. *Interpreters.* For U.S.-based activities, ECA strongly encourages applicants to hire their own locally based interpreters. However, applicants may ask ECA to assign State Department interpreters. One interpreter is typically needed for every four participants who require interpretation. When an applicant proposes to use State Department interpreters, the following expenses should be included in the budget: Published Federal per diem rates (both ''lodging'' and ''M&IE'') and ''home-program-home'' transportation in the amount of $400 per interpreter. Salary expenses for State Department interpreters will be covered by the Bureau and should not be part of an applicant's proposed budget. Bureau funds cannot support interpreters who accompany delegations from their home country or travel internationally.

4. *Book and Cultural Allowances.* Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Interpreters should be reimbursed up to $150 for expenses when they escort participants to cultural events. U.S. program staff, trainers or participants are not eligible to receive these benefits.

5. *Consultants.* Consultants may be used to provide specialized expertise or to make presentations. Honoraria rates should not exceed $250 per day. Organizations are encouraged to cost-share rates that would exceed that figure. Subcontracting organizations may also be employed, in which case the written agreement between the prospective grantee and sub-grantee should be included in the proposal. Such sub-grants should detail the division of responsibilities and proposed costs, and subcontracts should be itemized in the budget.

6. *Room rental.* The rental of meeting space should not exceed $250 per day. Any rates that exceed this amount should be cost shared.

7. *Materials.* Proposals may contain costs to purchase, develop and translate materials for participants. Costs for high quality translation of materials should be anticipated and included in the budget. Grantee organizations should expect to submit a copy of all program materials to ECA, and ECA support should be acknowledged on all materials developed with its funding.

8. *Equipment.* Applicants may propose to use grant funds to purchase equipment, such as computers and printers; these costs should be justified in the budget narrative. Costs for furniture are not allowed.

9. *Working meal.* Normally, no more than one working meal may be provided during the program. Per capita costs may not exceed $15–$25 for lunch and $20–$35 for dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. When setting up a budget, interpreters should be considered ''participants.''

10. *Return travel allowance.* A return travel allowance of $70 for each foreign participant may be included in the budget. This allowance would cover incidental expenses incurred during international travel.

11. *Health insurance.* Foreign participants will be covered during their participation in the program by the ECA-sponsored Accident and Sickness Program for Exchanges (ASPE), for which the grantee must enroll them. Details of that policy can be provided by the contact officers identified in this solicitation. The premium is paid by ECA and should not be included in the grant proposal budget. However, applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

12. *Wire transfer fees.* When necessary, applicants may include costs to transfer funds to partner organizations overseas. Grantees are urged to research applicable taxes that may be imposed on these transfers by host governments.

13. *In-country travel costs for visa processing purposes.* Given the requirements associated with obtaining J–1 visas for ECA-supported participants, applicants should include costs for any travel associated with visa interviews or DS–2019 pick-up.

14. *Administrative costs.* Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Application Package. While there is no rigid ratio of administrative to program costs, proposals in which the administrative costs do not exceed 25% of the total requested ECA grant funds will be more competitive under the cost effectiveness and cost sharing criterion, per item V.1 below. Proposals should show strong administrative cost sharing contributions from the applicant, the in-country partner and other sources.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times:

Application Deadline Date: Thursday, February 16, 2006.

Explanation of Deadlines: Due to heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have, in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and ten copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/NEA–AF–06–26, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

IV.3h. Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for its(their) review.

V. Application Review Information

V.1. *Review Process:* The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grant awards resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. All criteria carry equal weight in the proposal evaluation:

1. *Quality of the Program Idea:* Proposals should be substantive, well thought out, focused on issues of demonstrable relevance to all proposed participants, and responsive to the exchange suggestions and guidelines provided above.

2. *Implementation Plan and Ability to Achieve Objectives:* A detailed project implementation plan should establish a clear and logical connection between the interest, the expertise, and the logistic capacity of the applicant and the objectives to be achieved. The plan should discuss in concrete terms how the institution proposes to achieve the objectives. Institutional resources—including personnel—assigned to the project should be adequate and appropriate to achieve project objectives. The substance of workshops and site visits should be included as an attachment, and the responsibilities of U.S. participants and in-country partners should be clearly delineated.

3. *Institutional Capacity:* Proposals should include an institutional record of successful exchange programs, with reference to responsible fiscal management and full compliance with reporting requirements. The Bureau will consider the demonstrated potential of new applicants and will evaluate the performance record of prior recipients of Bureau grants as reported by the Bureau grant staff.

4. *Post-Grant Activities:* Applicants should provide a plan for sustained follow-on activity (building on the linkages developed under the grant and the activities initially funded by the grant) after grant funds have been expended. This will ensure that Bureau-supported projects are not isolated events. Funds for all post-grant activities must be in the form of contributions from the applicant or sources outside the Bureau. Costs for these activities must not appear in the proposal budget but should be outlined in the narrative.

5. *Project Evaluation/Monitoring:* Proposals should include a detailed plan to monitor and evaluate the project. Competitive evaluation plans will describe how the applicant organization will measure results, defined in both qualitative and quantitative terms and will include draft data collection instruments (surveys, questionnaires, etc.) in Tab E. See the ''Program Management/Evaluation'' section, item IV.3d.3 above for more information on the components of a competitive evaluation plan. Successful applicants (grantee institutions) will be expected to submit a report after each program component concludes or on a quarterly basis, whichever is less frequent. The Bureau also requires that grantee institutions submit a final narrative and financial report no more than 90 days after the expiration of a grant. Please refer to the ''Program Management/Evaluation'' section, item IV.3d.3 above for more guidance.

6. *Cost Effectiveness and Cost Sharing:* Overhead and administrative costs in the proposal budget, including salaries, honoraria and subcontracts for services, should be kept to a minimum. *Proposals whose administrative costs are less than twenty-five (25) per cent of the total funds requested from the Bureau will be deemed more competitive under this criterion.* Applicants are strongly encouraged to cost share a portion of overhead and administrative expenses. Cost-sharing, including contributions from the applicant, proposed in-country partner(s), and other sources should be included in the budget request. Proposal budgets that do not reflect cost sharing will be deemed not competitive in this category.

7. *Support of Diversity:* Proposals should demonstrate support for the Bureau's policy on diversity. Features relevant to this policy should be cited in program implementation (selection of participants, program venue, and program evaluation), program content, (orientation and wrap-up session, program meetings, resource materials

and follow-up activities), and program administration. Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the Proposal Submission Instructions (PSI) and the Diversity, Freedom and Democracy Guidelines section, Item IV.3d.2, above for additional guidance.

VI. Award Administration Information

VI.1a. *Award Notices:* Final awards cannot be made until funds have been appropriated by Congress, allocated, and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer and mailed to the recipient's responsible officer, identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. *Administrative and National Policy Requirements:* Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants.

http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.

VI.3. *Reporting Requirements:* You must provide ECA with a hard copy original plus two copies of the following reports:

1. Semi-annual program and financial reports, which include a description of program activities implemented in the course of the six-month period and an accounting of expenditures.

2. A final program and financial report no more than 90 days after the expiration date of the award.

3. Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Thomas Johnston, Office of Citizen Exchanges, ECA/PE/C/NEA–AF, Room 216, ECA/PE/C/NEA–AF–06–26, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 453–8162; Fax: (202)453–8168; E-mail: *JohnstonTJ@state.gov*. Correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/NEA–AF–06–26.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: December 7, 2005.

Dina Habib Powell,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E5–7391 Filed 12–14–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket Number FTA–2005–23227]

Notice of Revision of Title VI Circular and EEO Circular

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice and request for comment.

SUMMARY: The Federal Transit Administration (FTA) is revising and updating its Circulars 4702.1, ''Title VI Program Guidelines for Urban Mass Transit Administration Recipients'' and 4704.1 ''Equal Employment Opportunity Program Guidelines for Grant Recipients.'' FTA is seeking input from interested parties on this document, including examples of problems with compliance, best practices for compliance, and proposals for changes to these circulars. Upon consideration of the comments, FTA will issue revised circulars and will seek additional comments on the revised documents.

DATES: Comments must be received by January 17, 2006. Late filed comments will be considered to the extent practicable. FTA will publish a second notice in the **Federal Register** summarizing all comments received regarding this notice.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FTA–2005–23227] 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: 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 the docket number (FTA–2005–23227). 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 the Department's Docket Management System (DMS) Web site located at *http://dms.dot.gov.* This means that if your comment includes any personal identifying information, such information will be made available to users of DMS.

FOR FURTHER INFORMATION CONTACT: For the Title VI Circular, David Schneider, Office of Civil Rights, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4018 or at *David.Schneider@fta.dot.gov*;. For the EEO Circular, Sandra McCrea, Office of Civil Rights, 400 7th Street, SW., Washington, DC 20590, (202) 366–4018 or at *sandra.mccrea@fta.dot.gov*. For legal questions, Linda Lasley, Assistant Chief Counsel, Federal Transit Administration, 400 Seventh Street, SW., Room 9316, Washington, DC 20590, (202) 366–4011 or *Linda.Lasley@dot.gov*.

SUPPLEMENTARY INFORMATION:

1. Background

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance. Specifically, Title VI provides that ''no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.'' (42 U.S.C. 200d). Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790) states: ''No qualified handicapped person shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.'' Additionally, the Age Discrimination Act of 1975 (42 U.S.C. 6101) states that ''no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.'' 23 U.S.C. 324 provides a similar prohibition on the basis of sex: ''No person shall on the ground of sex be excluded from participating in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance under this title or carried on under this title.''

FTA Circulars 4702.1, ''Title VI Program Requirements for Urban Mass Transit Administration Recipients'' and 4704.1 ''Equal Employment Opportunity Program Guidelines for Grant Recipients'' provide information on how FTA will enforce Title VI and EEO requirements. Both circulars include information, guidance, and instructions on the objectives of the FTA Title VI and EEO programs; information on specific grant programs covered by the FTA Title VI and EEO programs; a description of the FTA data collection and reporting requirements; a summary of the FTA compliance review for Title VI and EEO certification procedures; a description of the FTA process for implementing remedial and enforcement actions; information on the DOT complaint process; and public information requirements.

Circulars 4702.1 and 4704.1 were last updated in May and July 1988, respectively. FTA is establishing a docket to receive public comment on these circulars. FTA intends to revise these circulars to incorporate existing practices, lessons learned, and reflect current Department policies and guidance relating to Title VI and EEO. Comments received will be summarized in another **Federal Register** notice.

In addition, FTA will solicit additional public comment on revisions to these circulars made as a result of public comment.

Issued in Washington, DC this 9th day of December 2005.

Michael Winter,

Director, FTA Office of Civil Rights.

[FR Doc. 05–24066 Filed 12–14–05; 8:45 am]

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Federal Register

Thursday,
December 15, 2005

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Critical Habitat for the Perdido Key Beach Mouse, Choctawhatchee Beach Mouse, and St. Andrew Beach Mouse; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT90

Endangered and Threatened Wildlife and Plants; Critical Habitat for the Perdido Key Beach Mouse, Choctawhatchee Beach Mouse, and St. Andrew Beach Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise critical habitat for the endangered Perdido Key beach mouse (*Peromyscus polionotus trissyllepsis*) and Choctawhatchee beach mouse (*Peromyscus polionotus allophrys*), and designate critical habitat for the endangered St. Andrew beach mouse (*Peromyscus polionotus peninsularis*) pursuant to the Endangered Species Act of 1973, as amended (Act). We are proposing 5 units of critical habitat totaling approximately 1,264 acres (ac) (511 hectares (ha)) for the Perdido Key beach mouse, 5 units totaling approximately 2,334 ac (944 ha) for the Choctawhatchee beach mouse, and 3 units totaling approximately 2,610 ac (1,056 ha) for the St. Andrew beach mouse. In total, approximately 6,208 ac (2,511 ha) fall within the boundaries of the proposed critical habitat designation. The proposed critical habitat is located in Baldwin County, Alabama, and Escambia, Okaloosa, Walton, Bay, and Gulf Counties, Florida.

DATES: We will accept comments from all interested parties until February 13, 2006. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by January 30, 2006.

ADDRESSES: If you wish to comment, you may submit your comments and information concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Panama City Fish and Wildlife Office, 1601 Balboa Avenue, Panama City, Florida 32405.

2. You may hand-deliver written comments to our Office, at the above address.

3. You may send comments by electronic mail (e-mail) to *flbeachmice@fws.gov*. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

4. You may fax your comments to 850–763–2177.

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

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Panama City U.S. Fish and Wildlife Service Office at the above address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, U.S. Fish and Wildlife Service, Panama City, Florida 32405, (telephone 850–769–0552; facsimile 850–763–2177).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse habitat, and what areas should be included in the designations that were occupied at the time of listing that contain the features that are essential for the conservation of the species and why and what areas that were not occupied at the listing are essential to the conservation of the species and why;

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

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities;

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments; and

(6) Information from the Department of Defense to assist the Secretary of the Interior in evaluating critical habitat on lands administered by or under the control of the Department of Defense based on any benefit provided by an Integrated Natural Resources Management Plan (INRMP) to the conservation of the Choctawhatchee beach mouse and St. Andrew beach mouse; and information regarding impacts to national security associated with the proposed designation of critical habitat.

(7) Whether we should split Unit 5 into two units, since part of the unit is occupied and part of the unit is not occupied by the species. This unit is all within the St. Andrew State Park.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (*see* **ADDRESSES** section). Please submit comments electronically to *flbeachmice@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: Beach mouse critical habitat'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your electronic message, contact us directly by calling the Panama City U.S. Fish and Wildlife Service Office at phone number 850–769–0552. Please note that the Internet address *flbeachmice@fws.gov* will be closed out at the termination of the public comment period.

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

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 470 species or 37.5 percent of the 1,253 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat.

We address the habitat needs of all 1,253 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that the August 6, 2004 Ninth Circuit judicial opinion (*Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*) found our definition of adverse modification was invalid. In response to the decision, the Director has provided guidance to the Service based on the statutory language. In this rule, our analysis of the consequences and relative costs and benefits of the critical habitat designation is based on application of the statute consistent with the Ninth Circuit's ruling and the Director's guidance.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

We intend to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on the Perdido Key beach mouse and Choctawhatchee beach mouse, please refer to the final listing rule published in the **Federal Register** on June 6, 1985 (50 FR 23872), and for the St. Andrew beach mouse, please refer to the final listing rule published on December 18, 1998 (63 FR 70053).

The Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse are three of five subspecies of the oldfield mouse that inhabit coastal dune communities along the Gulf coast of Florida and Alabama. Historically, Perdido Key beach mice were thought to occur in coastal dune habitat on Perdido Key between Perdido Bay, Alabama, to the west and Pensacola Bay, Florida, to the east (Bowen 1968). The effects of Hurricane Frederic (1979) coupled with increased habitat fragmentation due to human development led to the extirpation of all but one population of Perdido Key beach mice. Fewer than 30 individuals at Gulf State Park (at the westernmost end of Perdido Key) were once the only known existing population of Perdido Key beach mice (Holler *et al.* 1989). Beach mice from this site were used to reestablish mice at Gulf Islands National Seashore (GINS) (1986–1988; Holler *et al.* 1989). In 2000, ten Perdido Key beach mice (five pairs) were relocated from GINS-Perdido Key Area to Perdido Key State Park. In February of 2001, this relocation was supplemented with an additional 32 mice (16 pairs). Perdido Key beach mice were released on both north and south sides of Highway 292 in suitable habitat. Two years of quarterly survey trapping (standard protocol for determining presence or absence of beach mice) indicated that the relocations of mice to Perdido Key State Park were successful and this is now considered an established population (Service 2004a). Presently, beach mouse habitat exists on public lands in areas along 8.4 miles (mi) (13.5 kilometers (km)) of coastline on Perdido Key at GINS and Perdido Key State Park. Perdido Key beach mice were trapped on private lands between GINS and Perdido Key State Park in 2004, increasing documentation of current occurrences of the mouse. Perdido Key beach mice are believed to be extirpated at Gulf State Park since 1998 (Auburn University 1999), though two years of

quarterly trapping to determine absence of beach mice has not been conducted.

Choctawhatchee beach mice were once present along the coastal dunes between Choctawhatchee Bay and St. Andrew Bay, Florida (Bowen 1968). Based on trapping data, four general areas of occupancy currently exist: (1) Topsail Hill Preserve State Park (and adjacent eastern and western private lands), (2) Shell Island (includes St. Andrew State Park mainland, Tyndall Air Force Base (AFB), and private land inholdings), (3) Grayton Beach State Park (and adjacent eastern private lands), and (4) West Crooked Island (Tyndall AFB) and adjacent private lands. Approximately 96 percent of the lands known to be occupied by Choctawhatchee beach mice are public lands. Translocations to establish mice on private lands at Camp Creek/WaterSound in Walton County, Florida, began in March 2003, and the population was supplemented in March 2005 (Service 2003a, 2005). Topsail Hill Preserve State Park served as the source for the translocations (total of 36 mice, 18 pairs). Furthermore, as the viability of beach mouse populations on the St. Andrew State Park mainland and Henderson Beach State Park is uncertain, these sites may be considered for future translocation projects.

The geographical range of St. Andrew beach mice is identified as St. Joseph spit in Gulf County, Florida, to the east entrance of St. Andrew Bay, including Cape Sand Blas and Money Bayou in Bay County, Florida (Bowen 1968). The St. Andrew beach mouse currently consists of two core populations, East Crooked Island (Tyndall AFB) and adjacent private lands, and St. Joseph Peninsula State Park and adjacent private lands. Specific areas of private lands between the two core populations have been trapped since listing and presence has recently been established in one area (Moyers and Shea 2002; S.S. Shea, St. Joe Timberland Co., personal communication (pers. comm.), 2005). The current population at East Crooked Island is a result of translocations of beach mice from St. Joseph Peninsula State Park to Crooked Island (1997–1998). The persistence of St. Andrew beach mice on other public lands, such as Eglin AFB lands at Cape San Blas and Rish Park, is uncertain at this time. As there are currently only two core populations of this subspecies, and limited viable opportunities exist on public lands, a reestablishment project on private lands may be considered for this subspecies. Preliminary discussions have had favorable support.

Since the listing of these subspecies, research has refined previous knowledge of beach mouse habitat requirements and factors that influence their use of habitat. The findings most pertinent to this revision of critical habitat and prudency determination involve the role of scrub dune habitat. Coastal dune habitat is generally categorized as: primary dunes (characterized by sea oats (*Uniola paniculata*) and other grasses), secondary dunes (similar to primary dunes but also frequently include such plants as woody goldenrod (*Chrysoma pauciflosculosa*), false rosemary (*Conradina canescens*)), and interior or scrub dunes (often dominated by scrub oaks (*Quercus geminata*) and yaupon holly (*Ilex vomitoria*)). Contrary to the early belief that beach mice were restricted to (Howell 1909, 1921; Ivey 1949) or preferred the frontal dunes (Blair 1951; Pournelle and Barrington 1953; Bowen 1968), more recent research has shown that scrub habitat serves an invaluable role in the persistence of beach mouse populations (Swilling *et al.* 1998; Sneckenberger 2001). Beach mice occupy scrub dunes on a permanent basis and studies have found no detectable differences in beach mouse body mass, home range size, dispersal, reproduction, survival, food quality, and burrow site availability between scrub and frontal dunes (Swilling *et al.* 1998; Swilling 2000; Sneckenberger 2001). The transition from scrub habitat to maritime forest, which is characterized by large trees (pines and oaks), thick leaf litter, and dense understory, frequently serves to delineate the northern or landward extent of suitable beach mouse habitat.

While seasonally abundant, the availability of food resources in the primary and secondary dunes fluctuates (Sneckenberger 2001). In contrast, the scrub habitat provides a more stable level of food resources which becomes crucial when food is scarce or nonexistent in the primary and secondary dunes. This suggests that access to primary, secondary, and scrub dune habitat is essential to beach mice at the individual level.

In addition to providing burrow sites, food resources, and cover, scrub dune habitat also serves as a high-elevation refuge during storm events and as a population source as the primary and secondary dunes recover (Swilling *et al.* 1998; Sneckenberger 2001). Hurricanes can severely affect beach mice and their habitat, as tidal surge and wave action overwash habitat, leaving a flat sand surface denuded of vegetation; sand is deposited inland, completely or partially covering vegetation; blowouts between the Gulf of Mexico and bays and lagoons leave patchy landscapes of bare sand; primary dunes are sheared or eroded; and habitat is completely breached, creating channels from the Gulf of Mexico to bays and lagoons. Until frontal (primary and secondary) dune topography and vegetation redevelop, scrub habitat maintains beach mouse populations and provides the majority of food resources and potential burrow sites (Lynn 2000; Sneckenberger 2001). While storms temporarily reduce population densities (often severely), this disturbance regime maintains open habitat and retards succession, yielding a habitat more suitable for beach mice than one lacking disturbance. The low-nutrient soil of the coastal dune ecosystem often receives a pulse of nutrients from the deposition of vegetative debris along the coastline (Lomascolo and Aide 2001). Therefore, as the primary and secondary dunes recover, beach mice recolonize this habitat readily as food plants develop to take advantage of the newly available nutrients. Recovery times vary depending upon factors such as hurricane characteristics (that is, severity, amount of associated rain, directional movement of the storm eye, storm speed), successional stage of habitat prior to hurricane, elevation, and restorative actions post hurricane. Depending on these factors, recovery of habitat may take from one year to more than 40 years (Traylor-Holzer *et al.* 2005).

Species that are protected across their ranges have lower probabilities of extinction (Soule and Wilcox 1980). Despite local extirpations due to storm events or the harsh, stochastic nature of coastal ecosystems, beach mouse populations naturally recover and persist. Historically, extirpated areas would be recolonized as population densities increase and dispersal occurs from adjacent populated areas. In addition, from a genetic perspective, beach mice recover well from population size reductions (Wooten 1994), provided sufficient habitat is available for population expansion after the bottleneck occurs. As human development has fragmented the coastal dune landscape, beach mice can no longer recolonize along these areas as they did in the past (Holliman 1983). As a continuous presence of beach mice or suitable habitat along the coastline is no longer possible and any hurricane can impact the entire range of a subspecies, the probability of beach mice persisting would be enhanced by the presence of contiguous tracts of suitable habitat occupied by multiple independent populations (Danielson 2005). The history of the Perdido Key beach mouse

clearly illustrates the need for multiple populations (a now extirpated population was the source of the two remaining populations of the subspecies (Holler *et al.* 1989; Service 2004a)). While maintaining multiple populations of beach mouse subspecies provides protection from total loss (extinction) (Oli *et al.* 2001), conservation of a subspecies necessitates protection of genetic variability throughout its range (Ehrlich 1988). Conservation of a species over a range of habitat types where it is known to occur reduces the chance of losing disjunct populations, which represent an important conservation value for their adaptation to local environmental conditions and their genetic uniqueness (Fahrig and Merriam 1994). This includes ''peripheral'' populations (populations on the fringes of the natural range of the species/subspecies), which in many cases are thought to be highly desirable because of their distinct genetic characters or adaptations due to divergent natural selection (Lesica and Allendorf 1995). Preservation of natural populations is therefore crucial, as the loss of a population of beach mice can result in a permanent loss of alleles (Wooten and Holler 1999). This loss of genetic variability cannot be regained through translocations or other efforts.

Previous Federal Actions

The Perdido Key beach mouse and Choctawhatchee beach mouse were listed as endangered on June 6, 1985 (50 FR 23872). Critical habitat was designated for the Perdido Key beach mouse and the Choctawhatchee beach mouse at the time of listing, consisting primarily of primary and secondary dunes and did not include high-elevation (scrub dune) habitat. A recovery plan for these beach mice was completed in 1987. On November 5, 1991, the Service received a petition from the Alabama Conservancy to revise critical habitat for the Perdido Key beach mouse through an emergency rule. A notice announcing our finding that the petitioned action was warranted, but would be delayed until higher priority actions had been completed, was published on June 18, 1993 (58 FR 33606). On February 2, 1999, the Service was petitioned by the Sierra Club and Biodiversity Legal Foundation to revise critical habitat for the Perdido Key beach mouse, Choctawhatchee beach mouse, and the Alabama beach mouse (*Peromyscus polionotus ammobates*). The Service published a 90-day finding on November 18, 1999 (64 FR 63004). The 12-month finding, published September 26, 2000 (65 FR 57800), found that revision of critical habitat for the three subspecies of beach mice was warranted. Since that time, critical habitat revision has been precluded due to other higher priority listing and critical habitat actions. On June 17, 2003, a lawsuit was filed in the U.S. District Court for the Southern District of Alabama (*Sierra Club and Center for Biological Diversity* v. *Norton et al.*, 1:03–CV–00377–CB) alleging that the Service violated the Endangered Species Act by failing to revise critical habitat for the Perdido Key, Choctawhatchee, and Alabama beach mice and that the revision was withheld or unreasonably delayed under the Administrative Procedure Act. In a December 2004 declaration, we stated we would submit a proposed revision for the Perdido Key beach mouse and the Choctawhatchee beach mouse by November 15, 2005, and a final revision by September 30, 2006. The proposed revision of critical habitat for the Alabama beach mouse will be published in a separate determination.

The St. Andrew beach mouse was listed as endangered on December 18, 1998 (63 FR 70053). The designation of critical habitat was found to be not prudent at the time of listing. In 2003, a lawsuit was filed against the Service in 2003 by the Center for Biological Diversity (*Center for Biological Diversity* v. *Norton*, 4:03CV315–WS/WCS), challenging the ''not prudent'' determination. On July 27, 2004, the U.S. District Court for the Northern District of Florida granted the Service's motion for voluntary remand and ordered the Service to publish a new final decision with respect to the designation of critical habitat for the St. Andrew beach mouse on or before September 30, 2006. A recovery plan for this subspecies is currently under development.

For more information on previous Federal actions concerning the Perdido Key beach mouse and Choctawhatchee beach mouse, please refer to the final listing rule published in the **Federal Register** on June 6, 1985 (50 FR 23872). For more information on previous Federal actions concerning the St. Andrew beach mouse, please refer to the final listing rule published in the **Federal Register** on December 18, 1998 (63 FR 70053).

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species at the time of listing must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).) Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but was not known to be occupied at the time of listing will likely be essential to the conservation of the species and, therefore, included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and

General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. They require Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, one primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Public Law 106–554 and the associated Information Quality Guidelines.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act and its implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is listed as endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. In our December 18, 1998, final rule (63 FR 70053), we determined that the designation of critical habitat was not prudent for the St. Andrew beach mouse due to the lack of additional conservation benefit from such designation. However, several of our determinations that the designation of critical habitat would not be prudent have been overturned by court decisions. For example, *Conservation Council for Hawaii* v. *Babbitt*, (2 F. Supp. 2d 1280 [D. Hawaii 1998]), *Natural Resources Defense Council* v. *U.S. Department of the Interior*, (13 F. 3d 1121, 1125 [9th Cir. 1997]).

We are already working with Federal and State agencies, private individuals, and organizations in carrying out conservation activities for the St. Andrew beach mouse and in conducting surveys for additional occurrences of the species and to assess habitat conditions. However, the designation may provide additional information to individuals, local and State governments, and other entities engaged in long-range planning, since areas with features essential to the conservation of the species are more clearly defined and, to the extent currently feasible, the primary constituent elements of the habitat necessary to the survival of the subspecies are specifically identified. Moreover, although the low numbers and restricted range of these mice make it unlikely that their populations could withstand even moderate collecting pressure or vandalism, we do not have specific evidence for taking, collection, vandalism, trade, or unauthorized human disturbance.

Accordingly, we withdraw our previous determination that the designation of critical habitat will not benefit the St. Andrew beach mouse and now determine that the designation of critical habitat is prudent for this subspecies. At this time, we have sufficient information necessary to identify specific areas that meet the definition of critical habitat and are, therefore, proposing critical habitat for the St. Andrew beach mouse (see ''Methods'' section below for a discussion of information used in our reevaluation).

Methods

As required by section 4(b)(1)(A) of the Act, we used the best scientific data available in determining areas that contain the features that are essential to the conservation of the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse. We have reviewed the overall approach to conservation of the three subspecies of beach mice undertaken by the local, State, and Federal agencies operating within the species' range since their listing, and the recovery plan for Perdido Key and Choctawhatchee beach mice (1987).

We reviewed the available information pertaining to the historic and current distributions, previously designated critical habitat, life histories, habitats of, and threats to the beach mice. We reviewed available information that pertains to the habitat requirements of these subspecies, including material received since completion of the 1987 recovery plan. This material includes data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses and agency reports; regional Geographic Information System (GIS) coverages; and beach mouse habitat maps developed by the Service and Florida Fish and Wildlife Conservation Commission (FWC), as well as our own site-specific species and habitat information, recent biological surveys, reports and communication with other qualified biologists or experts, and unpublished species occurrence data contained within our files.

Four steps were conducted to identify critical habitat units. First, based on a compilation of information listed above on the known occurrences of the three subspecies of beach mice, we created maps indicating the areas and habitat features associated with these occurrences. The habitat units were delineated using ArcView (Environmental Systems Research Institute, Inc.), a computer GIS program, to evaluate GIS and locality data derived from a variety of Federal, State, and local agencies, and from private organizations and individuals. Our mapping process was based on the need

to exclude areas that lack essential habitat features, while simultaneously accounting for the dynamic nature of coastal habitat. We depicted the mapped shoreline according to the mean high water line (MHWL), though the land configurations of these coastal areas change dramatically through time. Landward boundaries of the units, which frequently consist of urban areas or maritime forest are more stable and provide easily discernable landmarks when visiting a proposed critical habitat unit. Habitat delineation included current and historic species occurrence locations. The Service has developed a trapping protocol for establishing absence of beach mice (see **ADDRESSES** to request a copy). In summary, this protocol requires two years of quarterly trapping with no beach mice captured to document absence. Presence of beach mice, however, can be successfully documented by the capture of one beach mouse, or the observation of beach mouse tracks or beach mouse burrows by a beach mouse expert or similarly qualified biologist.

Second, we identified, in accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, the physical and biological habitat features (also called primary constituent elements, or PCEs) at those sites that are essential to the conservation of the species. We mapped critical habitat unit boundaries at each site based on the extent of habitat containing sufficient PCEs to support biological function. The mapping itself was the third step. The fourth and final step was to determine and identify any areas that do not meet the definition of critical habitat under section 3(5)(A) of the Act, and to identify other areas that may be subject to an approved INRMP that provides a benefit to the species and may be exempted under section 4(a)(3), and to identify units that may be considered for exclusion based on section 4(b)(2) of the Act (see the Application of Sections 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act, below, for a detailed description).

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, we are required to base critical habitat determinations on the best scientific data available and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific PCEs essential for the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse are derived from their biological needs as described in the Background section of this proposal and in additional detail below.

Space for Individual and Population Growth and Normal Behavior

Long-term trapping data have shown that beach mouse densities are cyclic and fluctuate by magnitudes on a seasonal and annual basis. These fluctuations can be a result of reproduction rates, food availability, habitat quality and quantity, catastrophic events, disease, and predation (Blair 1951; Bowen 1968; Smith 1971; Hill 1989; Rave and Holler 1992; Swilling *et al.* 1998; Swilling 2000; Sneckenberger 2001). Without suitable habitat sufficient in size to support the natural cyclic nature of beach mouse populations as they expand, subspecies are at risk from local extirpation and extinction, and may not attain the densities necessary to persist through storm events and seasonal fluctuations of resources. The conservation of multiple large, contiguous tracts of habitat is a key to the persistence of beach mice.

At present, such large parcels exist mainly on public lands. Protection, management, and conservation of beach mice on public areas have been complicated by increased recreational use by humans as public lands are rapidly becoming the only natural areas left on the coast. Where protection of large contiguous tracts of beach mouse habitat along the coast is not possible, establishing multiple independent populations is the best defense against local and complete extinctions due to storms and other stochastic events (Danielson 2005). Protecting multiple populations increases the chance of at least one population within the range of a subspecies surviving episodic storm events and persisting while vegetation and dune structure recover.

Habitat Connectivity

Habitat loss and fragmentation associated with residential and commercial real estate development is the primary threat contributing to the endangered status of beach mice (Holler 1992a; Humphrey 1992). Coastal development has fragmented all the subspecies into disjunct populations. Isolation of habitats by imposing barriers to species movement is an effect of fragmentation that equates to reduction in total habitat (Noss and Csuti 1997). Furthermore, isolation of small populations of beach mice reduces or precludes gene flow between populations and can result in the loss of genetic diversity. Selander *et al.* (1971) found that allozyme variation in beach mouse populations (Perdido Key beach mice, Choctawhatchee beach mice, and Alabama beach mice) was significantly lower than the variation detected in adjacent inland populations. Correlations between genetic variation (heterozygosity) and other factors have been well-researched with oldfield mice. Lower levels of heterozygosity have been linked to less efficient feeding, fewer demonstrations of social dominance and exploratory behavior, and smaller body size (Garten 1976, Teska *et al.* 1990). Research focused on inbreeding depression in oldfield mice (including one beach mouse subspecies) determined that the effects of inbreeding negatively influenced factors such as litter size, number of litters, and juvenile survivorship (Lacy *et al.* 1995). Demographic factors, such as predation (especially by domestic cats), diseases, and competition with house mice, are intensified in small, isolated populations which may be rapidly extirpated by these pressures. Especially when coupled with events such as storms, reduced food availability, and reduced reproductive success, isolated populations may experience severe declines or extirpation (Caughley and Gunn 1996). The strength of influence these factors have on populations or individuals is largely dependent on the degree of isolation.

Connectivity becomes essential where mice occupy fragmented areas lacking one or more habitat types. If scrub habitat is lacking from a particular tract, adjacent or connected tracts with scrub habitat are necessary for food and burrow sites when resources are scarce in the frontal dunes, and are essential to beach mouse populations during and immediately after hurricanes. Trapping data suggest that beach mice occupying the scrub following hurricanes recolonize the frontal dunes once vegetation and some dune structure have recovered (Swilling *et al.* 1998; Sneckenberger 2001). Similarly, when frontal dune habitat is lacking from a tract and a functional pathway to frontal dune habitat does not exist, beach mice may not be able to obtain the resources

necessary to expand the population and reach the densities necessary to persist through the harsh summer season or the next storm. Functional pathways may allow for natural behavior such as dispersal and exploratory movements, as well as gene flow to maintain genetic variability of the population within fragmented or isolated areas. To that end, contiguous tracts or functionally connected patches of suitable habitat are features that are essential to the long-term conservation of beach mice.

Food Resources and Vegetative Cover

Beach mice feed primarily upon seeds and fruits, but have been shown to prey on insects. Beach mice appear to forage on food items based on availability and have shown no preferences for particular seeds or fruits (Moyers 1996). Research suggests that the availability of food resources fluctuates seasonally in Gulf Coast coastal dune habitat; specifically, food resources may be limited during winter and spring in the scrub habitat and limited in the frontal dunes in the summer and fall (Sneckenberger 2001). Nutritional analysis of foods available in each habitat revealed that seeds of plant species in both habitats provide a similar range of nutritional quality. The frontal dunes appear to have more species of high-quality foods, but these sources are primarily grasses and annuals that produce large quantities of small seeds in a short period of time. Foods available in the scrub consist of larger seeds and fruits that are produced throughout a greater length of time and linger in the landscape. Consequently, large, contiguous tracts containing both frontal dune and scrub habitat types are necessary to provide both: (1) A large quantity of food resources coinciding with the reproductive season, and (2) a relatively stable source of food resources when availability is reduced.

Foraging activities and other natural behaviors of beach mice are influenced by many factors. Artificial lighting alters behavior patterns causing beach mice to avoid otherwise suitable habitat and decreases the amount of time they are active in those areas (Bird *et al.* 2004). Within the relatively sparsely vegetated frontal dune and scrub dune habitat occupied by beach mice, the presence of vegetative cover reduces predation risk and perceived predation risk of foraging beach mice, and allows for normal movements, activity, and foraging patterns. Foraging in sites with vegetative cover is greater and more efficient than in sites without cover (Bird 2002). Beach mice have also been found to prefer coastal dune habitat (that is, not maritime forest) with increased percent cover of vegetation, and decreased distance between vegetated patches (Smith 2003). Behavioral modification or increased predation in response to these factors can result in population decreases and restricted use of available habitat.

Burrow Sites

Beach mice use burrows to avoid predators, protect young, store food, and serve as refugia between foraging bouts and during periods of rest. Beach mice have been shown to select burrow sites based on a suite of abiotic and biotic factors. A limitation in one or more factors may result in a shortage of suitable sites, and the availability of potential burrow sites in each habitat may vary seasonally. Beach mice tend to construct burrows in areas with greater plant cover, less soil compaction, steep slopes, and higher elevations above sea level (Lynn 2000; Sneckenberger 2001). These factors are likely important in minimizing energy costs of burrow construction and maintenance while maximizing the benefits of burrow use by making a safe and physiologically efficient refuge. Similar to food resources, this fluctuation in availability of burrow sites suggests that a combination of large, contiguous tracts of habitat with burrow sites in primary, secondary, and scrub dune habitat is essential to beach mice at the individual level.

Habitats Protected From Anthropogenic Disturbance

Artificial lighting, non-native species, and refuse can directly and indirectly increase predation pressure on beach mice beyond their natural levels. Free-roaming and feral pets are believed to have a devastating effect on beach mouse persistence (Bowen 1968; Linzey 1978) and are considered to be the main cause of the loss of at least one population of beach mice (Holliman 1983). Cat tracks have been observed in areas of low trapping success for beach mice (Auburn University 1999). The population and habitat viability analysis for the Alabama beach mouse indicated that if each population had as few as one feral cat that ate one mouse a day, rapid extinction of the species occurred in over 99 percent of all iterations (Traylor-Holzer *et al.* 2005). Refuse may attract competitors (house mice (*Mus musculus*)) and predators (such as coyotes (*Canis latrans*) and red foxes (*Vulpes vulpes*)), unsettling the natural predator/prey balance and competing with beach mice for resources. This issue is of particular importance and has the most impact when beach mouse populations are at low densities. This influx of development-related predators and competitors is believed to be the final cause of the extinction of the pallid beach mouse (*Peromyscus polionotus decoloratus*) (Humphrey 1992).

Beyond the direct effects of mortality due to predation, beach mouse habitat use and foraging patterns are influenced by these anthropogenic disturbances. Artificial lighting, for example, influences beach mouse foraging patterns and natural movements (for example, avoidance of an otherwise suitable area) due to an increased risk of predation in the lighted areas. Beach mice avoid areas with artificial lighting or reduce the time spent foraging in lighted areas (Bird *et al.* 2004). Consequently, because of these anthropogenic factors, mice may be unable to gather necessary food resources or fail to utilize otherwise suitable habitat.

PCEs for the Perdido Key Beach Mouse, Choctawhatchee Beach Mouse, and St. Andrew Beach Mouse

PCEs previously determined for the Perdido Key beach mouse and Choctawhatchee beach mouse included ''dunes and interdunal areas, and associated grasses and shrubs that provide food and cover'' (50 FR 23872). These elements did not address many of the requirements that we now know are crucial for long-term persistence of beach mice, including the need for scrub dune habitat. Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse's primary constituent elements include:

1. A contiguous mosaic of primary, secondary, and scrub vegetation and dune structure, with a balanced level of competition and predation and few or no competitive or predaceous nonnative species present, that collectively provide foraging opportunities, cover, and burrow sites.

2. Primary and secondary dunes, generally dominated by sea oats (*Uniola paniculata*), that, despite occasional temporary impacts and reconfiguration from tropical storms and hurricanes, provide abundant food resources, burrow sites, and protection from predators.

3. Scrub dunes, generally dominated by scrub oaks (*Quercus* spp.), that provide food resources and burrow sites, and provide elevated refugia during and after intense flooding due to

rainfall and/or hurricane-induced storm surge.

4. Functional, unobstructed habitat connections that facilitate genetic exchange, dispersal, natural exploratory movements, and recolonization of locally extirpated areas.

5. A natural light regime within the coastal dune ecosystem, compatible with the nocturnal activity of beach mice, necessary for normal behavior, growth, and viability of all life stages.

Criteria Used To Identify Critical Habitat

Stabilization of the Perdido Key, Choctawhatchee, and St. Andrew beach mice at their present populations and distributions will not achieve conservation of these subspecies. Protection and enhancement of existing populations and their habitat, plus reestablishment of populations in suitable areas within their historic ranges, are necessary for the subspecies survival and recovery. Core beach mouse populations (that is, populations that have been either relatively persistent in the recent past, or have recently maintained healthy densities) remain isolated and are vulnerable to natural and anthropogenic factors that may further reduce or degrade habitat or directly reduce beach mouse population sizes. Maximizing the number of independent populations is critical to species survival. Protection of a single, isolated, minimally viable population risks the extirpation or extinction of a species as a result of harsh environmental conditions, catastrophic events, or genetic deterioration over several generations (Kautz and Cox 2001). To reduce the risk of extinction through these processes, it is important to establish multiple protected populations across the landscape (Soulé and Simberloff 1986; Wiens 1996). To reduce overall risk to the subspecies, we aimed to propose units for each subspecies spaced throughout their respective historic ranges, depending on relative fragmentation, size, and health of habitat, as well as availability of areas with beach mouse PCEs.

Based on these considerations, an area was considered for designation where it possesses one or more of the PCEs and one of the following characteristics: (1) Supports a core population of beach mice; (2) was occupied by Perdido Key beach mouse, Choctawhatchee beach mouse, or St. Andrew beach mouse at the time of listing; or (3) is currently occupied by the beach mouse and is an area essential to the conservation of the species because it represents an existing population needed for conservation.

Following the strategy outlined above, we began by mapping coastal dune communities within the historic range of each subspecies of beach mouse. These areas were refined by using aerial map coverages to eliminate features such as housing developments and other areas that are unlikely to contribute to the conservation of beach mice. We then focused on areas supporting beach mice as well as areas that contain the PCEs for the subspecies. Because both the Perdido Key beach mouse and the St. Andrew beach mouse have been reduced to one location in the past, with additional populations re-established by biologists since, and translocations are currently underway for the Choctawhatchee beach mice, we believe that limiting the proposed designation to occupied areas would not yield sufficient habitat for the persistence of beach mice. As previously discussed, the fragmentation of the species' historic habitat coupled with the stochasticity of the landscape due to tropical storms makes multiple populations necessary for species conservation. Consequently, we are proposing units which were not occupied at the time of listing. These areas, however, are currently occupied by the species, have one or more of the PCEs, are within the historic range of the species, and are essential to their conservation. See below for a more explicit discussion of why these areas are essential to the conservation of the beach mice.

The combined extent of these mapped areas is defined as the habitat that contains features that are essential to the conservation of the subspecies. Although these areas proposed for designation represent only a small proportion of each subspecies' historic range, they include a significant proportion of the remaining intact coastal communities and reflect the habitat types historically occupied by beach mice. Areas not containing the PCEs, such as wetlands and maritime forests, were not included within the proposed designation. Field reconnaissance was done in a few areas for ground-truthing. We eliminated highly degraded tracts, and small, isolated, or highly fragmented tracts that provide no long-term conservation value. The remaining areas are proposed as five distinct units for the Perdido Key beach mouse, five distinct units for the Choctawhatchee beach mouse, and three distinct units for the St. Andrew beach mouse.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. We often exclude non-Federal public lands and private lands that are covered by an existing operative HCP under section 10(a)(1)(B) of the Act from designated critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. As discussed in further detail below (see ''Application of Sections 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act''), we are proposing two areas for exclusion that are currently protected through Habitat Conservation Plans that provide protection and habitat management for Choctawhatchee beach mice.

When determining the boundaries of proposed critical habitat for the Perdido Key beach mouse, Choctawhatchee beach mouse, and the St. Andrew beach mouse, we made every effort to avoid including within the boundaries of the map contained within this proposed rule developed areas such as buildings, paved areas, and other structures that lack PCEs. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat. It is important to note that the maps provided in this proposed rule (see ''Proposed Regulation Promulgation'' section) are for illustrative purposes. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions in the ''Proposed Regulation Promulgation'' section of this rule.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas are determined to be occupied at the time of listing and contain the PCEs which may require special management considerations or protections. As discussed in more detail in the unit descriptions below, we find that all of the PCEs in the areas we are proposing for designation may require

special management considerations or protections due to threats to the subspecies and/or its habitat. Such management considerations and protections include: management of non-native predators and competitors, management of non-native plants, protection of beach mice and their habitat from threats by road construction, urban and commercial development, heavy machinery, and recreational activities.

Proposed Critical Habitat Designation

Critical habitat for the Perdido Key, Choctawhatchee, and St. Andrew beach mice includes habitat throughout the subspecies' ranges in Baldwin County, Alabama, and Escambia, Okaloosa, Walton, Bay, and Gulf Counties, Florida. Lands proposed for critical habitat designation are under private, local agency, county, State, and Federal ownership. For each of the three subspecies, a brief description of each unit, and reasons why it is essential for the conservation of the beach mouse, are presented below. Some units were not known to be occupied at the time of listing. However, these areas are essential to the conservation of each beach mouse subspecies for two main reasons. First, at the time of listing, beach mice were thought to be restricted to the frontal dune habitat and researchers did not focus on scrub habitat. Consequently, occurrence information of beach mice in scrub habitat was sparse even in the relatively recent past. However, scrub habitat is now known to be invaluable to beach mice and inclusion of this habitat in critical habitat is a main stimulus of this redesignation. Second, as the coastal dune environment changes dramatically through time, so do beach mouse populations. As dunes erode or build and habitat and food resources fluctuate, beach mouse populations respond accordingly, either through short or long-term movements, or through local extinctions. As habitat improves in the future, densities increase or beach mice recolonize the recovering areas. Because of this aspect of their biology, and the fact that so few natural areas remain, these areas containing PCEs where beach mice had not been detected at the time of listing are important to the subspecies' persistence. We have proposed only those areas that we believe to be essential to the conservation of the subspecies. For these reasons listed above, we propose areas that were not known to be occupied at the time of listing but contain one or more of the PCEs and are essential to the conservation of the beach mice.

Perdido Key Beach Mouse

We are proposing five units as critical habitat for the Perdido Key beach mouse: (1) Gulf State Park Unit, (2) West Perdido Key Unit, (3) Perdido Key State Park Unit, (4) Gulf Beach Unit, and (5) Gulf Islands National Seashore Unit. Table 1 provides, by County, the approximate area (acres/hectares) determined to meet the definition of critical habitat for the Perdido Key beach mouse.

TABLE 1.—AREAS DETERMINED TO MEET THE DEFINITION OF CRITICAL HABITAT FOR THE PERDIDO KEY BEACH MOUSE AND THE AREA PROPOSED FOR EXCLUSION FROM THE FINAL CRITICAL HABITAT DESIGNATION, IF APPLICABLE

County, state	Areas meeting the definition of critical habitat (acres/hectares)	Area proposed for exclusion from the final critical habitat designation (acres/hectares)
Escambia, Florida	1116/452	NA
Baldwin, Alabama	148/59	NA
Total	1264/511	NA

The approximate area encompassed within each proposed critical habitat unit is shown in Table 2.

TABLE 2.—CRITICAL HABITAT UNITS PROPOSED FOR THE PERDIDO KEY BEACH MOUSE.

(Area estimates reflect all land within critical habitat unit boundaries. Effort was taken to remove areas without PCEs.)

Critical habitat unit	Federal acres/hectares	State acres/hectares	Local and private acres/hectares	Total acres/hectares
1. Gulf State Park Unit	0	115/46	0	115/46
2. West Perdido Key Unit	0	0	147/59	147/59
3. Perdido Key State Park Unit	0	238/96	0	238/96
4. Gulf Beach Unit	0	0	162/66	162/66
5. Gulf Islands National Seashore Unit	602/244	0	0	602/244
Total	602/244	353/142	309/125	1264/511

As the Perdido Key beach mouse would be extinct without the aid of re-establishment programs (Holler *et al.* 1989; Service 2004a), the unoccupied habitat is considered essential for its persistence and all of the habitat being designated contains features essential to the subspecies. We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Perdido Key beach mouse, below.

PKBM–1: Gulf State Park Unit

Unit 1 consists of 115 ac (46 ha) in southern Baldwin County, Alabama, on the westernmost region of Perdido Key. This unit encompasses essential features of beach mouse habitat within the boundary of Gulf State Park from the west tip of Perdido Key at Perdido Pass east to approximately 1.0 mi (1.6 km) west of where the Alabama–Florida State line bisects Perdido Key and the area from the mean high water line (MHWL) north to the seaward extent of the maritime forest. This unit was occupied by the species at the time of listing. Perdido Key beach mice were known to inhabit this unit during surveys in 1979 and 1982, and by 1986 this was the only known existing population of the subspecies (Humphrey and Barbour 1981; Holler *et al.* 1989). This population was a core population and was the donor site for the reestablishment of Perdido Key beach mice into Gulf Islands National Seashore in 1986. This project ultimately saved Perdido Key beach mice from extinction as the population at Gulf State Park was considered extirpated in 1998 due to tropical storms and predators (Auburn University 1999).

Beach mouse habitat in this unit consists of primary, secondary, and scrub dune habitat. Because scrub habitat is separated from the frontal dunes by a highway in some areas, the population inhabiting this unit can be especially vulnerable to hurricane impacts, and therefore further linkage to scrub habitat and/or habitat management would improve connectivity. This unit is managed by the Alabama Department of Conservation and Natural Resources and provides PCEs 2, 3, 4, and 5. While a management plan exists for this Park, it does not adequately address the threats to beach mice. Threats specific to this unit that may require special management considerations include presence of feral cats as well as other predators at unnatural levels and high recreational use that may result in soil compaction, damage to dunes, and/or a decrease in habitat quality. This unit, which contains interior scrub habitat as well as primary and secondary dunes, serves as an expansion of the original critical habitat designation (50 FR 23872).

PKBM–2: West Perdido Key Unit

Unit 2 consists of 114 ac (46 ha) in southern Escambia County, Florida, and 33 ac (13 ha) in southern Baldwin County, Alabama. This unit encompasses essential features of beach mouse habitat from approximately 1.0 mi (1.6 km) west of where the Alabama–Florida State line bisects Perdido Key east to 2.0 mi (3.2 km) east of the State line and areas from the MHWL north to the seaward extent of human development or maritime forest. This unit consists of private lands and ultimately includes essential features of beach mouse habitat between Perdido Key State Park (Unit 3) and Gulf State Park (Unit 1). Beach mouse habitat in this unit consists of primary, secondary, and scrub dune habitat and provides PCEs 2, 3, and 4. Habitat fragmentation and other threats specific to this unit are mainly due to development. Consequently, threats to this unit that may require special management considerations include habitat fragmentation and habitat loss, artificial lighting, presence of feral cats as well as other predators at unnatural levels, excessive foot traffic and soil compaction, and damage to dune vegetation and structure. This area was not known to be occupied at the time of listing. While no trapping has been conducted on these private lands to confirm absence for sections 7 and 10 permitting, sign of beach mouse presence was confirmed in 2005 through observations of beach mouse burrows and tracks (S. Sneckenberger, personal observation, 2005), and this unit is adjacent to contiguous, occupied beach mouse habitat (PKBM–3). Therefore, we have determined this unit to be currently occupied. This unit provides essential connectivity between two core population areas (Perdido Key State Park and Gulf State Park), provides habitat for expansion, natural movements, and recolonization, and is therefore essential to the conservation of the species. Specifically, this unit may have historically provided for the recolonization of Gulf State Park (PKBM–1) and/or may facilitate similar recolonization in the future as the habitat recovers from recent hurricane events.

PKBM–3: Perdido Key State Park Unit

Unit 3 consists of 238 ac (96 ha) in southern Escambia County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Perdido Key State Park from approximately 2.0 mi (3.2 km) east of the Alabama–Florida State line to 4.0 mi (6.4 km) east of the State line and the area from the MHWL north to the seaward extent of the maritime forest. Beach mouse habitat in this unit consists of primary, secondary and scrub dune habitat. Trapping efforts in this area were limited in the past. In 2000, a relocation program began to reestablish mice at Perdido Key State Park. This project is considered a success and the population occupying this unit now considered a core population. This unit provides PCEs 2, 3, 4, and 5 and is essential to the conservation of the species. Improving and/or restoring habitat connections would increase habitat quality and provide more functional connectivity for dispersal, exploratory movements, and population expansion. This unit is managed by the Florida Park Service. While a management plan exists for this Park, it does not adequately address the threats to beach mice. Threats specific to this unit that may require special management considerations include presence of feral cats as well as other predators at unnatural levels and high recreational use that may result in soil compaction, damage to dunes, and/or a decrease in habitat quality. This unit serves as a re-designation and expansion of a zone included in the initial critical habitat designation (50 FR 23872); however, the zone did not include scrub habitat, which we now know is necessary for the long-term persistence of beach mouse populations.

PKBM–4: Gulf Beach Unit

Unit 4 consists of 162 ac (66 ha) in southern Escambia County, Florida. This unit includes essential features of beach mouse habitat between Gulf Islands National Seashore and Perdido Key State Park from approximately 4.0 mi (6.4 km) east of the Alabama–Florida State line to 6.0 mi (9.7 km) east of the State line and areas from the MHWL north to the seaward extent of human development or maritime forest. This unit consists of private lands. Beach mouse habitat in this unit consists of primary, secondary, and scrub dune habitat. Habitat fragmentation and other threats specific to this unit are mainly due to development. Consequently, threats to this unit that may require special management considerations include habitat fragmentation and habitat loss, artificial lighting, presence of feral cats as well as other predators at unnatural levels, excessive foot traffic and soil compaction, and damage to dune vegetation and structure. While not known to be occupied at the time of listing, presence of beach mice has recently been confirmed within the unit as a result of trapping efforts in conjunction with permitting (Service 2004b). This unit provides PCEs 2, 3, and 4 and is essential to the conservation of the species. This unit includes high-elevation scrub habitat and serves as a refugia during storm events and as an important source population if storms extirpate or greatly

reduce local populations. This unit currently provides essential connectivity between two core populations (Gulf Islands National Seashore (Unit 5) and Perdido Key State Park (Unit 3)) and provides essential habitat for expansion, natural movements, and recolonization (PCE 4).

PKBM–5: Gulf Islands National Seashore Unit

Unit 5 consists of 602 ac (244 ha) in southern Escambia County, Florida, on the easternmost region of Perdido Key. This unit encompasses essential features of beach mouse habitat within the boundary of Gulf Islands National Seashore–Perdido Key Area (also referred to as Johnson Beach) from approximately 6.0 mi (9.7 km) east of the Alabama–Florida State line to the eastern tip of Perdido Key at Pensacola Bay and the area from the MHWL north to the seaward extent of the maritime forest. Beach mouse habitat in this unit consists mainly of primary and secondary dune habitat, but provides the longest contiguous expanse of frontal dune habitat within the historic range of the Perdido Key beach mouse. Perdido Key beach mice were known to inhabit this unit in 1979, though the population was impacted by Hurricane Frederic (1979) and no beach mice were captured during surveys in 1982 and 1986 (Humphrey and Barbour 1981; Holler *et al.* 1989) therefore, the unit was unoccupied at the time of listing. In 1986, Perdido Key beach mice were reestablished at this unit as a part of Service recovery efforts. This reestablishment project was identified as the most urgent recovery need for the mouse (Service 1987; Holler *et al.* 1989). The project is considered a success, as the population inhabiting this unit is considered a core population. In 2000 and 2001, Perdido Key beach mice captured from this site served as donors to re-establish beach mice at Perdido Key State Park (Unit 3).

Unit 5, in its entirety, possesses all five PCEs and is essential to the conservation of the species. However, most of this unit consists of frontal dunes, making the population inhabiting this unit particularly threatened by storm events. Threats specific to this unit that may require special management considerations include presence of feral cats as well as other predators at unnatural levels and high recreational use that may result in soil compaction, damage to dunes, and/or a decrease in habitat quality. This unit is managed by the National Park Service–Gulf Islands National Seashore. While a management plan exists for the National Seashore, it is over 20 years old and does not adequately address the threats to beach mice. This unit is included in the initial critical habitat designation (50 FR 23872).

Choctawhatchee Beach Mouse

We are proposing five units as critical habitat for the Choctawhatchee beach mouse: (1) Henderson Beach Unit, (2) Topsail Hill Unit, (3) Grayton Beach Unit, (4) Deer Lake Unit, and (5) West Crooked Island/Shell Island Unit. Table 3 below provides approximate area determined to meet the definition of critical habitat for the Choctawhatchee beach mouse and area proposed for exclusion from the final critical habitat designation by County.

TABLE 3.—AREAS DETERMINED TO MEET THE DEFINITION OF CRITICAL HABITAT FOR THE CHOCTAWHATCHEE BEACH MOUSE AND THE AREA PROPOSED FOR EXCLUSION FROM THE FINAL CRITICAL HABITAT DESIGNATION

County, state	Definitional areas (acres/hectares)	Area proposed for exclusion from the final critical habitat designation (acres/hectares)
Bay, Florida	1649/667	NA
Walton, Florida	589/238	87/35
Okaloosa, Florida	96/39	NA
Total	2334/944	87/35

The approximate area encompassed within each proposed critical habitat unit is shown in Table 4.

TABLE 4.—CRITICAL HABITAT UNITS PROPOSED FOR THE CHOCTAWHATCHEE BEACH MOUSE

(Area estimates reflect all land within critical habitat unit boundaries. Effort was taken to remove areas without PCEs.)

Critical Habitat Unit	Federal acres/hectares	State acres/hectares	Local and private acres/hectares	Total acres/hectares
1. Henderson Beach Unit	0	96/39	0	96/39
2. Topsail Hill Unit	0	273/110	28/11	301/121
3. Grayton Beach Unit	0	152/62	20/8	172/70
4. Deer Lake Unit	0	38/15	78/32	116/47
5. West Crooked Island/Shell Island Unit	1237/500	374/151	38/16	1649/667
Total	1237/500	933/377	164/67	2334/944

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Choctawhatchee beach mouse, below.

CBM–1: Henderson Beach Unit

Unit 1 consists of 96 ac (39 ha) in Okaloosa County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Henderson Beach State Park from 0.5 mi (0.8 km) east of the intersection of Highway 98 and Scenic Highway 98 to 0.25 mi (0.4 km) west of Matthew Boulevard and the area from the MHWL north to the seaward extent of the maritime forest. This westernmost unit provides primary, secondary, and scrub dune habitat and possesses PCEs 2 and 3. This unit is within the historic range of the subspecies, however it was not known to be occupied at the time of listing and current occupancy is unknown as no recent efforts have been made to document beach mouse presence or absence. This unit is essential because it includes protected, high-elevation scrub habitat, and it may serve as a refuge during storm events and as an important source population if storms extirpate or greatly reduce local populations or populations to the east.

This unit is managed by the Florida Park Service and is essential to the conservation of the species. While a management plan exists for this Park, it does not adequately address the threats to beach mice. Threats specific to this unit that may require special management considerations include habitat fragmentation, presence of feral cats as well as other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, and/or a decrease in habitat quality.

CBM–2: Topsail Hill Unit

Unit 2 consists of 301 ac (121 ha) in Walton County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Topsail Hill Preserve State Park, as well as adjacent private lands from 0.1 mi (0.2 km) east of Gulf Pines to 0.5 mi (0.8 km) west of the inlet of Oyster Lake and the area from the MHWL north to the seaward extent of human development or maritime forest. This unit provides primary, secondary, and scrub dune habitat and possesses all five PCEs. Its large, contiguous, high-quality habitat allows for natural movements and population expansion. Beach mice were confirmed present in the unit in 1979 (Humphrey 1992), were present at the time of listing, and this unit continues to support a core population of Choctawhatchee beach mice. Beach mice have been captured recently on private lands within the unit, east of the park (Service 2003a). The population of Choctawhatchee beach mice inhabiting this unit appears to harbor unique genetic variation, and displays a relatively high degree of genetic divergence considering the close proximity of this population to other populations (Wooten and Holler 1999).

This unit has portions with different ownership, purposes, and mandates. Threats specific to this unit that may require special management considerations include artificial lighting from private development, presence of feral cats as well as other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, and/or a decrease in habitat quality. This unit was included in the initial critical habitat designation (50 FR 23872); however, the original zone did not include scrub habitat which we now know is necessary for the long-term persistence of beach mouse populations. While a management plan exists for the State Park within this unit, it does not adequately address the threats to beach mice.

CBM–3: Grayton Beach Unit

Unit 3 consists of 172 ac (70 ha) in Walton County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Grayton Beach State Park, as well as adjacent private lands and inholdings, from 0.3 mi (0.5 km) west of the inlet of Alligator Lake east to 0.8 mi (1.3 km) west of Seagrove Beach and the area from the MHWL north to the seaward extent of human development or maritime forest. This unit provides primary, secondary, and scrub dune habitat, possesses PCEs 2, 3, 4, and 5, and is essential to the conservation of the species. Beach mice were not detected in the unit in 1979 (Humphrey 1992), however they were found to be present in 1995 after Hurricane Opal (Gore 1994). While it seems likely that beach mice were present at the time of listing (and may have been present, but not detected, in 1979), we do not have data to confirm this assumption. Therefore, we consider this unit to be unoccupied at the time of listing. A program to strengthen/reestablish the population began in 1997 and 1998, and yielded a persistent population at the State park. Further relocations, specifically in the west portion of Grayton Beach State Park, are under consideration. Recent evidence of beach mice on park lands was documented in 2004 (Service 2004c). Beach mice are also known to currently occupy the private lands east of the park within the unit. This unit includes private lands that we are proposing for exclusion (see ''Application of Sections 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act,'' below). The proposed excluded area is not included in the total acreage of this unit.

Threats specific to this unit that may require special management considerations include artificial lighting from private development, presence of feral cats as well as other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, and/or a decrease in habitat quality. This unit was included in the initial critical habitat designation (50 FR 23872); however, the revised zone includes scrub habitat which we now know is necessary for the long-term persistence of beach mouse populations. While a management plan exists for the State Park within this unit, it does not adequately address the threats to beach mice.

CBM–4: Deer Lake Unit

Unit 4 consists of 116 ac (47 ha) in Walton County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Deer Lake State Park as well as adjacent private lands from approximately 1 mi (1.6 km) east of the Camp Creek Lake inlet west to approximately 0.5 mi (0.8 km) west of the inlet of Deer Lake and the area from the MHWL north to the seaward extent of maritime forest or human development. This unit provides primary, secondary, and scrub dune habitat, possesses PCEs 2, 3, 4, and 5, and is essential to the conservation of the species. Because trapping efforts in this area have been limited to incidental trapping, and beach mice were not detected in 1998 (Auburn University 1999), we consider this unit to be unoccupied at the time of listing. Choctawhatchee beach mice were translocated from Topsail Hill Preserve State Park to private lands in this unit in 2003 and 2005 (Service 2003a, 2005). Trapping and/or tracking surveys confirm the continued health of this population, and tracking within the adjacent State park lands have indicated expansion of the population into the park. This unit includes private lands that we are proposing for exclusion (*see* ''Application of Sections 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act,'' below). The proposed excluded area is not included in the total acreage of this unit.

Threats specific to this unit that may require special management considerations include artificial lighting from private development, presence of

feral cats as well as other predators at unnatural levels, and high residential use that may result in soil compaction, damage to dunes, and/or a decrease in habitat quality. While a management plan exists for the State Park within this unit, it does not adequately address the threats to beach mice.

CBM–5: West Crooked Island/Shell Island Unit

Unit 5 consists of 1,649 ac (667 ha) in Bay County, Florida. This unit encompasses essential features of beach mouse habitat within the boundaries of St. Andrew State Park mainland from 0.1 mi (0.2 km) east of Venture Boulevard east to the entrance channel of St. Andrew Sound, Shell Island east of the entrance of St. Andrew Sound east to East Pass, and West Crooked Island southwest of East Bay and east of the entrance channel of St. Andrew Sound, and areas from the MHWL north to the seaward extent of the maritime forest. Shell Island consists of State lands, Tyndall AFB lands, as well as small private inholdings. Choctawhatchee beach mice were known to inhabit the majority of Shell Island in 1987 (Holler 1992b) and were again confirmed present in 1998 (Auburn University 1999), 2002, and 2003 (Service 2002a, 2003b). Because beach mice inhabited nearly the entirety of suitable habitat on the island less than two years prior to listing and were reconfirmed after listing, we consider this area to be occupied at the time of listing. The West Crooked Island population is the result of a natural expansion of the Shell Island population after the two islands became connected in 1998 and 1999, a result of Hurricanes Opal and Georges (Lynn 2004). (Shell Island was connected to the mainland prior to the 1930s when a navigation inlet severed the connection on the western end.) Beach mice were documented at St. Andrew State Park mainland as late as the 1960s (Bowen 1968), though no records of survey efforts exist again until Humphrey and Barbour (1981) and Meyers (1983) at which time beach mice were not detected. Therefore, it seems likely that this area was not occupied at the time of listing. Current beach mouse population levels at this site are unknown, and trapping to document the absence of mice has not been conducted. Similar to the original designation, this Park is proposed as critical habitat because it has features essential to the Choctawhatchee beach mouse. It is also within the historic range of the mouse and is essential to the conservation of the species. This unit supports the easternmost population of the Choctawhatchee beach mouse, with the next known population 22 miles to the west.

This unit provides primary, secondary, and scrub dune habitat and possesses all five PCEs. Portions of this unit are managed by the Florida Park Service, while the remaining areas are federally (Tyndall AFB) and privately owned. Threats specific to this unit that may require special management considerations include artificial lighting from existing and proposed development, presence of feral cats as well as other predators at unnatural levels, and high residential/recreational use that may result in soil compaction, damage to dunes, and/or a decrease in habitat quality. While a management plan exists for the State Park, it does not adequately address the threats to beach mice. This unit is included in the initial critical habitat designation (50 FR 23872); however, the revised zone includes scrub habitat, which we now know is necessary for the long-term persistence of beach mouse populations. This revision also expands the previously designated unit to include West Crooked Island.

St. Andrew Beach Mouse

We are proposing three units as critical habitat for the St. Andrew beach mouse: (1) East Crooked Island Unit, (2) Palm Point Unit, and (3).St. Joseph Peninsula Unit Table 5 below provides approximate area determined to meet the definition of critical habitat for the St. Andrew beach mouse by County. Urban development and the lack of available suitable habitat limited us to these areas. The large size and high quality of habitat in Unit 1 is considered to alleviate some of the need for additional units/independent populations.

TABLE 5.—AREAS DETERMINED TO MEET THE DEFINITION OF CRITICAL HABITAT FOR THE ST. ANDREW BEACH MOUSE AND THE AREA PROPOSED FOR EXCLUSION FROM THE FINAL CRITICAL HABITAT DESIGNATION

County, state	Definitional areas (area/hectares	Area proposed for exclusion from the final critical habitat designation (acres/hectares)
Gulf, Florida	1640/663	NA
Bay, Florida	970/393	NA
Total	2610/1056	NA

The approximate area encompassed within each proposed critical habitat unit is shown in Table 6.

TABLE 6.—CRITICAL HABITAT UNITS PROPOSED FOR THE ST. ANDREW BEACH MOUSE

(Area estimates reflect all land within critical habitat unit boundaries. Effort was taken to remove areas without PCEs.)

Critical habitat unit	Federal acres/hectares	State acres/hectares	Local and private acres/hectares	Total acres/hectares
1. East Crooked Island Unit	649/263	0	321/130	970/393
2. Palm Point Unit	0	0	139/56	139/56

TABLE 6.—CRITICAL HABITAT UNITS PROPOSED FOR THE ST. ANDREW BEACH MOUSE—Continued

(Area estimates reflect all land within critical habitat unit boundaries. Effort was taken to remove areas without PCEs.)

Critical habitat unit	Federal acres/hectares	State acres/hectares	Local and private acres/hectares	Total acres/hectares
3. St. Joseph Peninsula Unit	0	1280/518	221/89	1501/607
Total	649/263	1280/518	681/275	2610/1056

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the St. Andrew beach mouse, below.

SABM–1: East Crooked Island Unit

Unit 1 consists of 970 ac (393 ha) in Bay County, Florida. This unit encompasses essential features of beach mouse habitat on East Crooked Island from the entrance of St. Andrew Sound to 1 mi (1.6 km) west of Mexico Beach, including Raffield Peninsula, and the area from the MHWL to the seaward extent of the maritime forest. Beach mouse habitat in this unit consists of primary, secondary, and scrub dune habitat and possesses all five PCEs. St. Andrew beach mice were known to inhabit the unit in 1986 and 1989 (James 1992), though the population was presumably extirpated due to impacts from hurricanes. The East Crooked Island population was reestablished with donors from St. Joseph State Park in 1997. This unit was occupied at the time of listing. Recent trapping confirms present occupation of mice (Service 2002b; Moyers and Shea 2002). This unit maintains connectivity along the island and this unit is essential to provide a donor population following storm events.

The majority of this unit is federally owned (Tyndall AFB), while the remaining is privately owned. While the existing Integrated Natural Resources Management Plan (INRMP) for Tyndall AFB does not adequately address beach mouse conservation, a revision to the INRMP is currently under development. Threats specific to this unit that may require special management considerations include artificial lighting both on Tyndall AFB and private lands, presence of feral cats as well as other predators at unnatural levels, and high recreational and military use that may result in soil compaction, damage to dunes, and/or a decrease in habitat quality.

SABM–Unit 2: Palm Point

Unit 2 consists of 139 ac (56 ha) in Gulf County, Florida. This unit encompasses habitat from Palm Point 1.25 mi (2.0 km) northwest of the inlet of the Gulf County Canal to the southeastern boundary of St. Joe Beach and the area from the MHWL to the seaward extent of the maritime forest. We consider beach mice to have been present in this unit at the time of listing, because St. Andrew beach mice were documented in the area by Bowen (1968) and recent trapping has documented current presence within the unit (S.S. Shea, pers. comm., 2005). Since St. Andrew beach mice are currently limited to two core populations, protecting this mainland site located within the species' historic range is needed for the subspecies' long-term persistence. As other viable opportunities are limited or nonexistent, this unit is essential to reduce the threats of stochastic events to this subspecies. Furthermore, as this unit is on the mainland, it is somewhat buffered from the effects of storm events. This area provides frontal and secondary dune habitat, but may provide limited connectivity between habitats. It provides PCEs 2, 3, and 4. Threats specific to this unit that may require special management considerations include proposed development and its associated habitat fragmentation, habitat loss, artificial lighting, presence of feral cats as well as other predators at unnatural levels, and high residential use that may result in soil compaction, damage to dunes, and/or a decrease in habitat quality.

SABM–Unit 3: St. Joseph Peninsula

Unit 3 consists of 1,501 ac (607 ha) in Gulf County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of St. Joseph Peninsula State Park (Park) as well as south of the Park to the peninsula's constriction north of Cape San Blas (also known as the ''stumphole'' region) and area from the MHWL to the seaward extent of the maritime forest. Beach mouse habitat in this unit consists of primary, secondary, and scrub dune habitat, and provides a relatively contiguous expanse of habitat within the historic range of the St. Andrew beach mouse. This unit possesses all five PCEs and was occupied at the time of listing. St. Andrew beach mice were known to inhabit this unit in 1986 and 1987 (James 1992), 1989, 1992, 1993, and 1994 (Gore 1994) and the Park presently supports a core population. In addition, recent tracking efforts suggest that mice continue to occupy private lands south of the Park. The Park alone does not provide sufficient habitat to allow for population expansion along the peninsula, which is necessary for a population anchored by the tip of a historically dynamic peninsula. A continuous presence of beach mice along the peninsula is the species' best defense against local and complete extinctions due to storm events. The population of St. Andrew beach mice inhabiting this unit appears to possess unique genetic variation, and displays greater than expected genetic divergence from other populations (Wooten and Holler 1999).

Portions of this unit are managed by the Florida Park Service, while the remaining area is federally (Eglin AFB) or privately owned. While a management plan exists for the State Park within this unit, it does not adequately address the threats to beach mice. Threats specific to this unit that may require special management considerations include artificial lighting from private development, habitat fragmentation and habitat loss, presence of feral cats as well as other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, and/or a decrease in habitat quality. The population inhabiting this unit may also be particularly susceptible to hurricanes due to its placement within St. Joseph Bay (the peninsula is a thin barrier peninsula with a north-south orientation).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Such alterations include, but are not limited, to alterations adversely modifying any

of those physical or biological features that were the basis for determining the habitat to be critical. We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). Until such time as a proposed designation is finalized, any reasonable and prudent alternatives or reasonable and prudent measures included in a conference report are advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency ensures that their actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the three subspecies of beach mice or their critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (e.g., Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of these three subspecies of beach mice. Federal activities that, when carried out, may adversely affect critical habitat for these three subspecies of beach mice include, but are not limited to:

(1) Actions that would significantly alter dune structure and stability, soil compaction levels, and substrate characteristics. Such activities could include, but are not limited to, excessive foot traffic; military missions; dredging and disposal operations; the use of construction, utility, or off-road vehicles in beach mouse habitat; and sand contamination from gravel, clay, or construction debris. These activities, even if temporary, could alter burrow construction, reduce the availability of potential burrow sites, and degrade or destroy beach mouse habitat.

(2) Actions that would significantly alter the natural vegetation of the coastal dune community. Such activities could include, but are not limited to, allowing non-native species to establish in the area, landscaping with plants that do not reflect habitat type prior to disturbance, and landscaping that yields excessive leaf litter. These activities could alter beach mouse foraging activities and degrade or destroy beach mouse habitat.

(3) Actions that would significantly alter the natural predator/prey balance of the coastal dune community by impacting the quality of the habitat. Such activities could include, but are not limited to, allowing unprotected refuse in the area and allowing or encouraging feral cat communities. These activities could alter beach mouse foraging activities and the availability of foraging resources, and directly alter beach mouse survival.

(4) Actions that would significantly alter natural lighting. Such activities could include, but are not limited to, allowing artificial lighting that does not comply with wildlife-friendly lighting specifications. These activities could alter beach mouse foraging activities, increase predation upon beach mice, and reduce the use of otherwise suitable beach mouse habitat.

(5) Actions that would directly result in a significant loss of habitat and/or elimination or degradation of functional pathways within and among critical habitat units. Such activities could include, but are not limited to, residential or commercial development and associated use, road widening and maintenance, and land clearing. These activities eliminate beach mouse habitat; reduce connectivity necessary for gene flow; reduce all necessary resources, such as food, mates, burrow sites, and refugia from storms; and decrease space available to conduct natural behaviors, thereby limiting their ability to persist.

For the Perdido Key beach mouse, we consider the five proposed critical habitat units to be occupied by the

subspecies currently and/or at the time of listing. The presence of this subspecies in Unit 1 (Gulf State Park) is presumed to be dangerously low or extirpated due to direct impacts from hurricanes. If the population inhabiting this unit does not recover or rebound naturally, beach mice from other populations may be translocated to this site. We consider all of these units included in this proposed designation to contain the features that are essential to the conservation of the Perdido Key beach mouse, and if unoccupied at the time of listing, are essential to the conservation of the species.

For the Choctawhatchee beach mouse, we consider four of the five proposed critical habitat units to be occupied by the subspecies currently and/or at the time of listing. The presence of this subspecies in Unit 1 (Henderson Beach) is unknown at this time. Beach mice were documented at St. Andrew State Park mainland as late as the 1960s (Bowen 1968), though no records of survey efforts exist again until Humphrey and Barbour (1981) and Meyers (1983) at which time beach mice were not detected. The extent of these surveys is not certain, and we have since developed survey protocol to document occupied versus unoccupied habitat. Trapping has not been conducted to confirm presence or absence at either proposed unit. If mice are absent from these sites, reestablishment would provide crucial recovery support for Choctawhatchee beach mice. These units are within the historic range of the subspecies and provide habitat features that are essential to a subspecies in a rapidly growing and increasingly fragmented region. Loss of either of these units would result in a significant collapse of the subspecies' range. We consider all of the units included in this proposed designation to contain the features essential to the conservation of the Choctawhatchee beach mouse, and if unoccupied at the time of listing, are essential to the conservation of the species.

For the St. Andrew beach mouse, we consider the three proposed critical habitat units to be occupied by the subspecies currently and/or at the time of listing. We consider all three units included in this proposed designation to contain the features that are essential to the conservation of the St. Andrew beach mouse.

Application of Sections 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

Section 3(5)(A) of the Act defines ''critical habitat'' as the specific areas within the geographical area occupied by the species at the time of listing on which are found those physical and biological features (i) essential to the conservation of the species and (ii) which may require special management considerations or protection. Therefore, areas within the geographical area occupied by the species at the time of listing that do not contain the features essential for the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographical area occupied by the species at the time of listing that do not require special management or protection also are not, by definition, critical habitat. To determine whether an area requires special management, we first determine if the essential features located there generally require special management to address applicable threats. If those features do not require special management, or if they do in general but not for the particular area in question because of the existence of an adequate management plan or for some other reason, then the area does not require special management.

We consider a current plan to provide adequate management or protection if it meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule or adequate funding for implementing the management plan); and (3) the plan provides assurances that the conservation strategies and measures will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

Furthermore, Section 318 of the Fiscal Year 2004 National Defense Authorization Act (Pub. L. No. 108–136) addresses the relationship of INRMPs to critical habitat by adding a new section 4(a)(3)(B) to the Endangered Species Act. This provision prohibits the Service from designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary of the Interior determines in writing that such a plan provides a benefit to the species for which critical habitat is proposed for designation. Eglin AFB has an INRMP in place that provides a framework for managing natural resources, and we request information from DOD on the benefit of Eglin's INRMP for the St. Andrew beach mouse to assist the Secretary of the Interior in meeting our section 4(a)(3) responsibilities. Tyndall AFB is currently updating its INRMP. Lands with physical and biological features essential to the conservation of the St. Andrew beach mouse and the Choctawhatchee beach mouse on those installations are proposed as critical habitat. However, we specifically solicit comments on the inclusion or exclusion of such areas, as well as supporting information contained in the INRMP for any request for exclusion.

Finally, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

In our critical habitat designations, we use both the provisions outlined in sections 3(5)(A) and 4(b)(2) of the Act to evaluate those specific areas that we consider proposing as critical habitat as well as for those areas that are formally proposed for designation as critical habitat. Lands we have found do not meet the definition of critical habitat under section 3(5)(A) or have excluded pursuant to section 4(b)(2) include those covered by the following types of plans if they provide assurances that the conservation measures they outline will be implemented and effective: (1) Legally operative HCPs that cover the species, (2) draft HCPs that cover the species and have undergone public review and comment (*i.e.*, pending HCPs), (3) Tribal conservation plans that cover the species, (4) State conservation plans that cover the species, and (5) National Wildlife Refuge System Comprehensive Conservation Plans.

Habitat Conservation Plans

Section 10(a)(1)(B) of the ESA authorizes us to issue to non-Federal entities a permit for the incidental take of endangered and threatened species.

This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species (*i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). The ESA specifies that an application for an incidental take permit must be accompanied by a habitat conservation plan, and specifies the content of such a plan. The purpose of conservation plans is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated, and that the action does not appreciably reduce the survival and recovery of the species. There are currently two legally operative HCPs in existence for the Choctawhatchee beach mouse covering areas that would otherwise meet the criteria for critical habitat: Stallworth Preserve (issued in 1995, with amendments in 1995 and 1998), WaterSound and WaterColor (issued in 2000) in Walton County, Florida, totaling 87 ac (35 ha). These HCPs provide for the conservation of Choctawhatchee beach mice and in general include activities like habitat protection, enhancement and restoration; partnership in the implementation and monitoring of beach mouse translocation programs on the property, native landscaping, predator control, and through adaptive management, assurances that the conservation effort will be effective. The two HCPs include beach mouse population monitoring (trapping several times a year), outdoor lighting guidelines, beach access that minimizes impact beach mouse habitat (elevated dune walkovers), as well as dune revegetation and restoration. The two HCPs include the continued maintenance of the remaining undisturbed beach mouse habitat.

(1) Benefits of Inclusion of the Stallworth Preserve, WaterSound and WaterColor HCPs

The principal regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation pursuant to section 7 of the Act to ensure that they will not destroy or adversely modify critical habitat. In the *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059, (9th Cir 2004), the Court has ruled that adverse modification evaluations require consideration of impacts on the recovery of species. Conducting section 7 consultations would provide benefits on HCP lands with a Federal nexus by helping ensure the integrity of these lands is maintained. For example, if a federally funded road project was proposed to go across respective HCP lands that were designated as critical habitat, a consultation would need to be conducted to ensure the designated critical habitat was not destroyed or adversely modified.

Designation of critical habitat serves to educate landowners, state and local governments, and the public, regarding the potential conservation value of the area. This helps focus, prioritize, and revitalize conservation efforts, such as dune restoration projects, or more extensive monitoring of beach mouse populations.

(2) Benefits of Exclusion of the Stallworth Preserve, WaterSound, and WaterColor HCPs

We identified a number of possible benefits of excluding the area covered by the two HCPs from critical habitat designation. First, to the extent designation would provide any additional protection of beach mice habitat, costs associated with that protection would be avoided. Second, exclusion would reduce largely redundant administrative costs of section 7 consultation. Third, exclusion would help to foster an atmosphere of cooperation in the conservation of endangered species. HCPs and other conservation partnership efforts typically provide far greater conservation benefits to species than the limited benefits arising from critical habitat designation. The latter benefits are restricted to actions with a Federal nexus, and can require only that the action not adversely modify the habitat. It cannot compel, and in practice may discourage, the sort of active management actions that generally are needed to recover listed species.

Currently, two of our HCP sites are involved in translocation efforts. With this cooperation we are able to partner with private land owners in habitat restoration, beach mouse translocations, and population monitoring, thereby facilitating recolonization of previously inhabited areas, encouraging and providing suitable habitat for the long-term persistence of beach mice, obtaining more information on the subspecies, and improving and discovering new techniques and opportunities that will assist in the recovery of several beach mouse subspecies. Fourth, exclusion would provide an incentive for participation in the development of new HCPs. The exclusion of HCP lands from critical habitat designations is an important incentive for participation in the HCP program; on the other hand, failure to exclude HCP lands could undermine the conservation benefits provided by the HCP program, and, more generally the partnerships required to conserve most listed species.

It is possible although unlikely, that any Federal action will be proposed that would be likely to destroy or adversely modify the habitat proposed as critical within the area governed by these HCPs. If such a project was proposed, due to the specific way in which jeopardy and adverse modification are analyzed for the Choctawhatchee beach mouse, it would likely also jeopardize the continued existence of the species. In addition, we expect that the benefit of informing the public of the importance of this area to the Choctawhatchee beach mouse's conservation would be slight due to the fact that there has already been a designation of critical habitat for beach mice in this area, including public notice and comment, the HCPs themselves underwent public review and comment, and this proposal is undergoing public review and comment. Therefore, we assign relatively little weight to the benefits of designating this area as critical habitat.

In contrast, although the benefits of encouraging participation in HCPs, particularly large-scale HCPs, and, more broadly, helping to foster cooperative conservation are indirect, enthusiastic HCP participation and an atmosphere of cooperation are crucial to the long-term effectiveness of the endangered species program. Therefore, we assign great weight to these benefits of exclusion. To the extent that there are regulatory benefits of including, there would be associated costs that could be avoided by excluding the area from the designation. However, as we expect the regulatory benefits to be slight, we likewise give little weight to avoidance of those associated costs, as well as the additional transaction costs related to section 7 compliance.

Therefore, we have determined that the benefits of inclusion of the areas covered by these HCPs are small, while the benefits of exclusion are more significant. Through these measures identified above, we believe that for these three sites, the benefits of exclusion outweigh the benefits of inclusion. Because we anticipate that little if any conservation benefit to the Choctawhatchee beach mouse will be foregone as a result of excluding these areas, the exclusion will not result in the extinction of the Choctawhatchee beach mouse. Accordingly, we are soliciting comments on whether to exercise discretion under section 4(b)(2) to exclude the areas covered by these HCPs from the designation of critical

habitat for the Choctawhatchee beach mouse.

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for these three subspecies of beach mice is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.fws.gov/panamacity*, or by contacting the Panama City U.S. Fish and Wildlife Service Office directly (*see* **ADDRESSES** section). For further explanation, see the ''Regulatory Flexibility Act'' and ''Regulatory Planning and Review'' discussions below.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following its publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule, including those of the peer reviews, during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. We intend to schedule public hearings once the draft economic analysis is available such that we can take public comment on both issues, the proposed designation and economic analysis simultaneously. However, we can schedule public hearings on this proposal prior to that time, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments. When available, the draft economic analysis can be obtained from the internet website at *www.fws.gov/panamacity* or by contacting the Panama City U.S. Fish and Wildlife Service Office directly (*see* **ADDRESSES** section).

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (that is, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis for the proposed designation prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of its availability of and reopen the public comment period for the proposed designation for an additional 60 days. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities, accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to revise critical habitat for the Perdido Key and Choctawhatchee beach mouse, and designate critical habitat for the St. Andrew beach mouse is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

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

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

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

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

(b) Due to current public knowledge of the species' protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that this rule will significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Florida and Alabama. The proposed designation of critical habitat in areas currently occupied by the beach mice imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the proposed areas to assist the public in understanding the habitat needs of the beach mice.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with

recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands occupied at the time of listing containing the features essential for the conservation and no tribal lands that are unoccupied areas that are essential for the conservation of the three subspecies of beach mice. Therefore, critical habitat for the beach mice has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Panama City U.S. Fish and Wildlife Service Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is the Panama City U.S. Fish and Wildlife Service Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for ''Mouse, St. Andrew beach'' under ''MAMMALS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Mouse, St. Andrew beach.	*Peromyscus polionotus peninsularis.*	U.S.A. (FL)	Entire	E	655	17.95(a)	NA
*	*	*	*	*	*		*

3. In § 17.95, amend paragraph (a) by revising the entries for ''Choctawhatchee beach mouse'' and ''Perdido Key beach mouse'' and adding an entry for ''St. Andrew beach mouse'' under ''MAMMALS'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) Mammals:

* * * * *

Choctawhatchee Beach Mouse (*Peromyscus polionotus allophrys*)

(1) Critical habitat units are depicted for Okaloosa, Walton, and Bay Counties, Florida, on the maps below.

(2) The primary constituent elements of critical habitat for the Choctawhatchee beach mouse (CBM) are the habitat components that provide:

(i) A contiguous mosaic of primary, secondary, and scrub vegetation and dune structure, with a balanced level of competition and predation and few or no competitive or predaceous nonnative species present, that collectively provide foraging opportunities, cover, and burrow sites;

(ii) Primary and secondary dunes, generally dominated by sea oats (*Uniola paniculata*), that, despite occasional temporary impacts and reconfiguration from tropical storms and hurricanes, provide abundant food resources, burrow sites, and protection from predators;

(iii) Scrub dunes, generally dominated by scrub oaks (*Quercus* spp.), that provide food resources and burrow sites, and provide elevated refugia during and after intense flooding due to rainfall and/or hurricane-induced storm surge;

(iv) Functional, unobstructed habitat connections that facilitate genetic exchange, dispersal, natural exploratory movements, and re-colonization of locally extirpated areas; and

(v) A natural light regime within the coastal dune ecosystem, compatible with the nocturnal activity of beach mice, necessary for normal behavior, growth, and viability of all life stages.

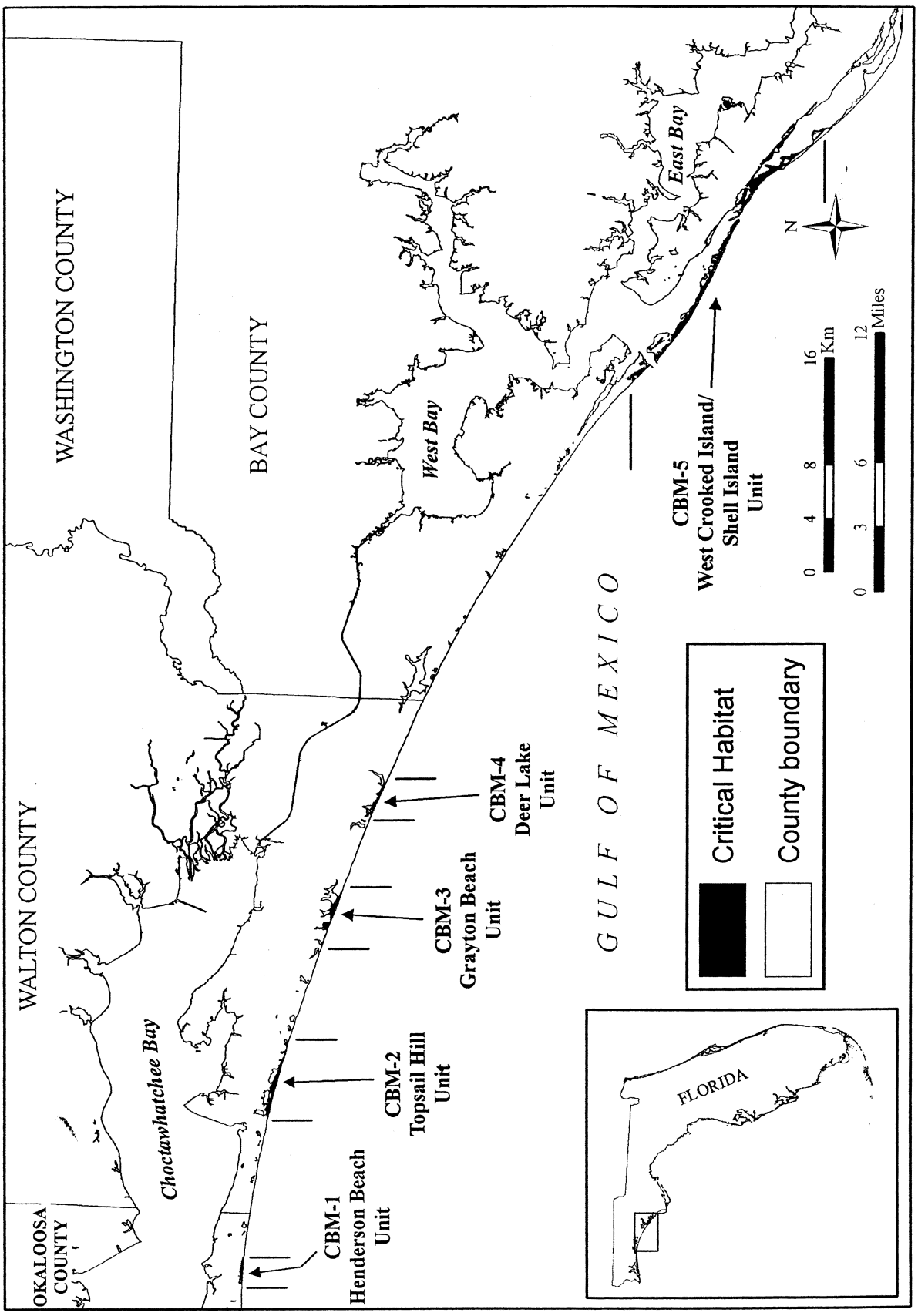
(3) Critical habitat does not include man-made structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, driveways, and roads, and the land on which such structures are located.

(4) *Critical Habitat Map Units.* Data layers defining map units were created by delineating habitats that contained one or more of the primary constituent elements defined in paragraph (2), over 1999 and 2004 digital ortho photography at a scale of at least 1:4000.

(5) **Note:** Map 1—Index Map of Critical Habitat Units for the Choctawhatchee beach mouse follows:

BILLING CODE 4310–55–P

Index of Proposed Critical Habitat Units for Choctawhatchee Beach Mouse



BILLING CODE 4310–55–C

(6) CBM—Unit 1: Henderson Beach Unit, Okaloosa County, Florida.

(i) *General Description:* Unit 1 consists of 96 ac (39 ha) in Okaloosa County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Henderson Beach State Park from 0.5 mile east of the intersection of Highway 98 and Scenic Highway 98 to 0.25 mile west of Matthew Boulevard and the area from the mean high water level (MHWL) north to the seaward extent of the maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle map Destin, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E,N): 553127.73, 3361659.7; 553118.25, 3361738.27; 553113.59, 3361734.19; 553108.89, 3361731.3; 553107.43, 3361726.11; 553109.17, 3361720.21; 553113.27, 3361714.76; 553117.31, 3361712.08; 553120.24, 3361706.21; 553125.11, 3361701.97; 553129.54, 3361699.7; 553134.76, 3361697.45; 553141.19, 3361694.44; 553145.3, 3361688.99; 553149.37, 3361685.13; 553154.57, 3361683.67; 553157.2, 3361689.68; 553160.7, 3361692.54; 553166.37, 3361688.32; 553172.09, 3361682.12; 553173.43, 3361676.21; 553168.76, 3361672.13; 553163.31, 3361667.63; 553160.25, 3361662.8; 553153.21, 3361658.26; 553149.32, 3361655; 553151.1, 3361647.11; 553152.37, 3361643.97; 553151.71, 3361638.8; 553151.79, 3361635.24; 553155.06, 3361631.75; 553159.13, 3361627.89; 553161.59, 3361624.78; 553162.1, 3361620.03; 553159.37, 3361617.98; 553153.02, 3361617.83; 553145.5, 3361616.85; 553143.5, 3361617.19; 553138.78, 3361615.49; 553134.39, 3361616.18; 553126.77, 3361619.16; 553115.13, 3361623.63; 553107.05, 3361629.38; 553102.11, 3361636.39; 553099.86, 3361647.04; 553098.42, 3361656.91; 553098.17, 3361666.82; 553094.35, 3361692.88; 553091.71, 3361703.13; 553082.59, 3361718.36; 553082.04, 3361724.69; 553082.21, 3361733.81; 553087.65, 3361738.7; 553102.32, 3361739.86; 553118.25, 3361738.27.

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(7) CBM-Unit 2: Topsail Hill Unit, Walton County, Florida.

(i) *General Description:* Unit 2 consists of 301 ac (121 ha) in Walton County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Topsail Hill Preserve State Park, as well as adjacent private lands from 0.1 mile east of Gulf Pines 0.5 mile west of the inlet of Oyster Lake and the area from the MHWL north to the seaward extent of human development or maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle map Miramar Beach, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E,N): 568237.02, 3359100.24; 565790.59, 3360018.31; 565796.34, 3360020.57; 565803.96, 3360017.2; 565810.66, 3360019.37; 565817.86, 3360017.55; 565818.85, 3360009.64; 565824.39, 3360010.97; 565832.3, 3360012.35; 565838.06, 3360003.81; 565842.44, 3360003.92; 565846.95, 3359998.04; 565849.54, 3360006.03; 565847.76, 3360013.17; 565845.89, 3360024.98; 565839.14, 3360024.82; 565834.08, 3360036.18; 565828.88, 3360037.67; 565826.72, 3360044.73; 565832.24, 3360046.87; 565836.86, 3360052.1; 565836.25, 3360061.2; 565847.92, 3360071.04; 565854.41, 3360065.27; 565860.36, 3360065.79; 565861.85, 3360054.35; 565866.39, 3360047.28; 565872.87, 3360041.95; 565867.78, 3360039.01; 565857.25, 3360047.49; 565852.69, 3360039.01; 565846.27, 3360041.66; 565841.64, 3360051.85; 565839.51, 3360041.87; 565843.74, 3360031.67; 565850.75, 3360021.55; 565857.1, 3360005.85; 565864.71, 3360002.85; 565874.64, 3360003.1; 565885.06, 3359999.8; 565890.85, 3359990.01; 565897.62, 3359989.43; 565906.33, 3359990.83; 565911.61, 3359986.22; 565917.25, 3359983.18; 565929.51, 3359985.42; 565932.65, 3359970.89; 565939.68, 3359975.8; 565947.64, 3359975.19; 565946.99, 3359969.24; 565958.42, 3359973.08; 565963.68, 3359969.22; 565966.15, 3359965.72; 565972.62, 3359961.51; 565975.07, 3359958.45; 565986.16, 3359959.91; 565997.72, 3359958.58; 566005.34, 3359956.02; 566007.5, 3359948.96; 566017.17, 3359943.2; 566010.47, 3359940.66; 566011.06, 3359933.56; 566018.61, 3359932.94; 566022.34, 3359927.1; 566028.95, 3359932.82; 566035.43, 3359927.8; 566041.93, 3359922.4; 566050.5, 3359913.13; 566057.66, 3359916.99; 566066.75, 3359919.21; 566076.94, 3359920.15; 566079.91, 3359912.67; 566077.34, 3359908.73; 566082.12, 3359903.98; 566093.56, 3359906.64; 566104.8, 3359907.04; 566109.7, 3359896.74; 566123.29, 3359893.89; 566127, 3359888.49; 566136.57, 3359886.73; 566144.51, 3359887.3; 566144.72, 3359878.57; 566149.95, 3359875.95; 566158.26, 3359877.72; 566167.75, 3359879.14; 566175.93, 3359869.48; 566182.85, 3359863.28;

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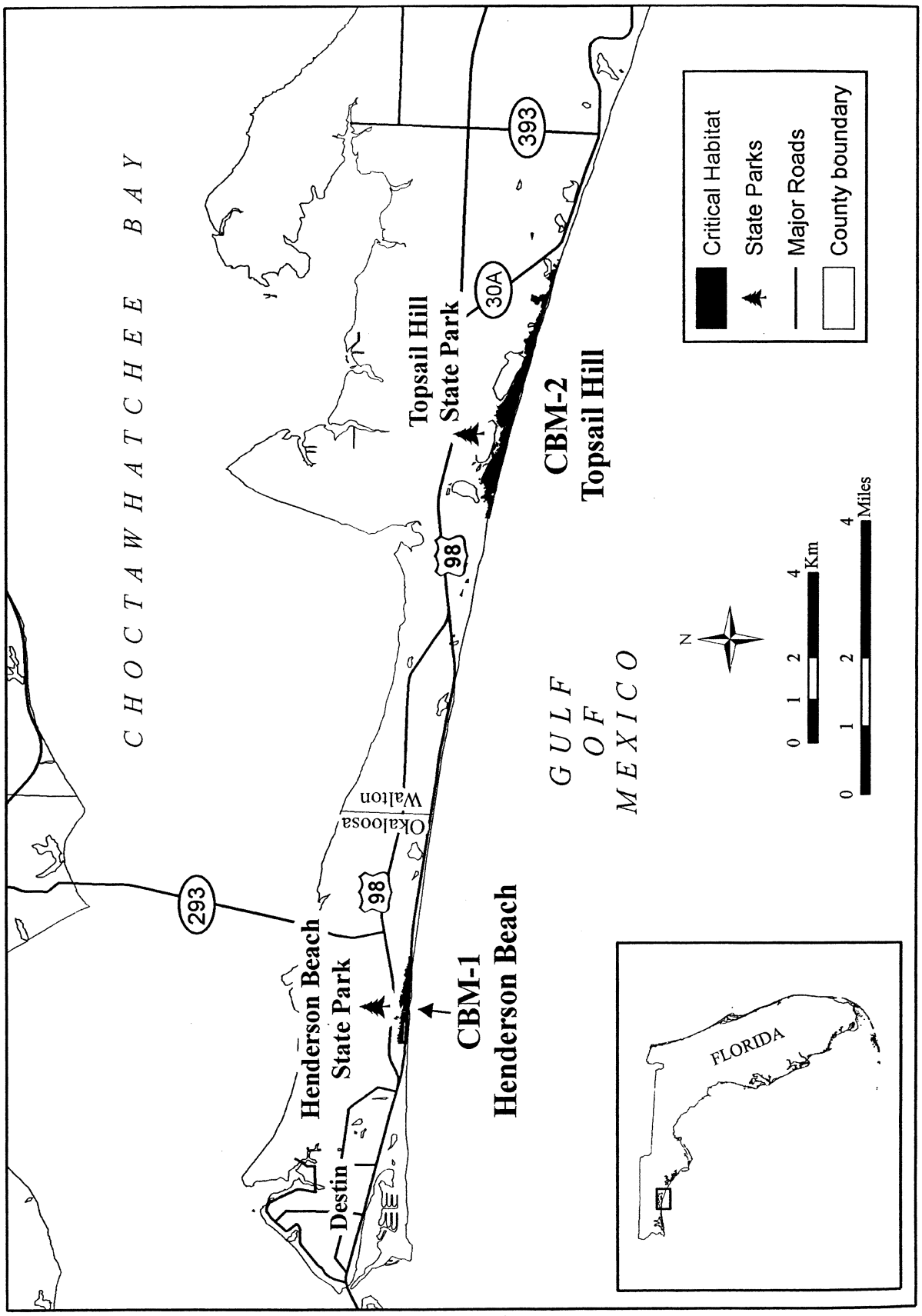
(iii) **Note:** Map 2 of Units 1 and 2 follows:

BILLING CODE 4310–55–P

Proposed Critical Habitat (Henderson Beach and Topsail Hill Units) for the Choctawhatchee beach mouse Okaloosa and Walton Counties, Florida



BILLING CODE 4310–55–C

(8) CBM—Unit 3: Grayton Beach Unit, Walton County, Florida.

(i) *General Description:* Unit 3 consists of 172 ac (70 ha) in Walton County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Grayton Beach State Park, as well as adjacent private lands and inholdings, from 0.3 mile west of the inlet of Alligator Lake east to 0.8 mile west of Seagrove Beach and the area from the MHWL north to the seaward extent of human development or maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle map Grayton Beach, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E,N): 578136.1, 3356102.15; 578222.77, 3356036.73; 578222.16, 3356000.38; 578077.28, 3356072.88; 578050.5, 3356079.33; 578039.08, 3356101.21; 578064.26, 3356111.33; 578073.84, 3356125.86; 578094.18, 3356138.66; 578138.88, 3356162.31; 578160.71, 3356162.85; 578185.78, 3356145.69; 578197.27, 3356130.86; 578209.61, 3356114.13; 578204.08, 3356113.24; 578206.15, 3356109.73; 578211.73, 3356108.62; 578209.79, 3356091.16; 578207.08, 3356088.34; 578209.49, 3356086.78; 578215.44, 3356087.37; 578218.54, 3356091; 578222.89, 3356091.48; 578232.2, 3356084.6; 578226.62, 3356085.65; 578218.4, 3356080.26; 578219.72, 3356076.98; 578223.42, 3356075.39; 578233.12, 3356074.2; 578230.76, 3356069.71; 578226.33, 3356069.1; 578223.25, 3356065.84; 578223.24, 3356065.02; 578222.77, 3356036.73

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(9) CBM—Unit 4: Deer Lake Unit, Walton County, Florida.

(i) *General Description:* Unit 4 consists of 116 ac (47 ha) in Walton County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Deer Lake State Park as well as adjacent private lands from approximately 1 mile east of the Camp Creek Lake inlet west to approximately 0.5 mile west of the inlet of Deer Lake and the area from the MHWL north to the seaward extent of maritime forest or human development.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle map Point Washington, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E,N): 587936.95, 3352709.03; 588073.1, 3352728.14; 587973.52, 3352737.87; 587972.96, 3352695.34; 587965.98, 3352695.17; 587954.26, 3352687.32; 587937.81, 3352677.8; 587956.31, 3352684.63; 587965.27, 3352691.59; 587972.94, 3352691.1; 587972.73, 3352623.17; 587921.05, 3352640.8; 587885.12, 3352655.89; 587858.02, 3352670.32; 587833.03, 3352673.19; 587798.42, 3352686.69; 587832.63, 3352716.88; 587832.11, 3352741.78; 587891.48, 3352734.89; 587904.93, 3352734.48; 587907.05, 3352744.83; 587903.48, 3352763.78; 587890.72, 3352765.4; 587889.84, 3352780.55; 587888.2, 3352786.75; 587906.94, 3352784.03; 587924.42, 3352784.47; 587943.15, 3352781.81; 587945.35, 3352773.5; 587944.88, 3352741.4; 587962.39, 3352740.65; 587961.47, 3352777.46; 587970.93, 3352783.25; 587978.85, 3352784.26; 587990.99, 3352775.45; 587992.36, 3352784.6; 587993.06, 3352788.61; 588000.13, 3352791.54; 588000.76, 3352798.29; 587997.66, 3352810.89; 587993.77, 3352823.09; 587999.46, 3352833.91; 587995.02, 3352848.97; 587997.19, 3352857.32; 588011.25, 3352855.61; 588020.79, 3352855.1; 588021.85, 3352812.68; 588019.25, 3352805.87; 588020.5, 3352787.3; 588038.35, 3352788.56; 588037.08, 3352815.87; 588035.92, 3352838; 588035.4, 3352855.09; 588044.97, 3352853.39; 588047.17, 3352844.71; 588055.98, 3352842.12; 588067.52, 3352841.66; 588075.49, 3352850.08; 588074.08, 3352768.16; 588073.1, 3352728.14.

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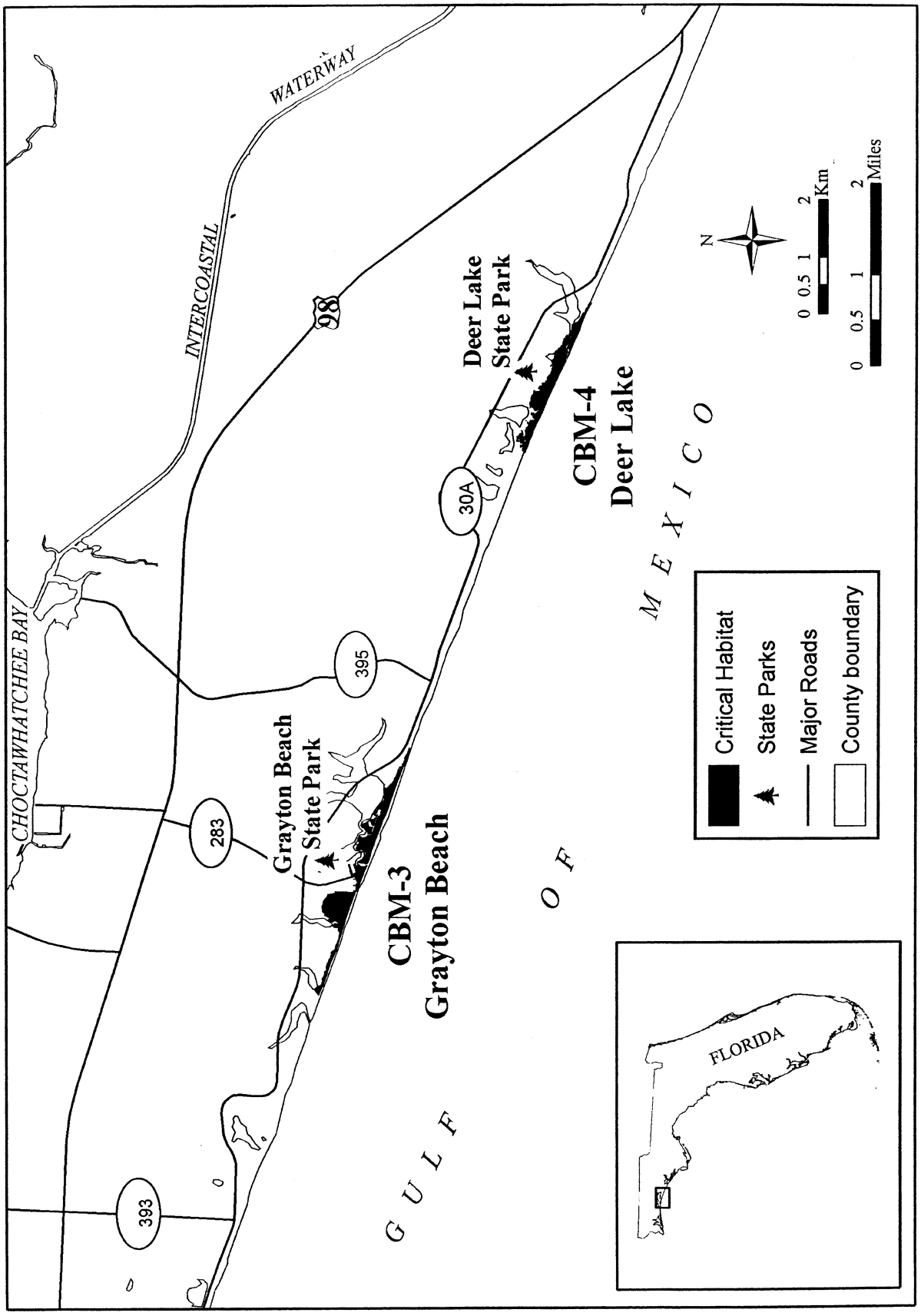
(iii) **Note:** Map 3 of Units 3 and 4 follows:

BILLING CODE 4310–55–P

Proposed Critical Habitat (Grayton Beach and Deer Lake Units) for the Choctawhatchee beach mouse
Walton County, Florida



BILLING CODE 4310–55–C

(10) CBM—Unit 5: West Crooked Island/ Shell Island Unit, Bay County, Florida.

(i) *General Description:* Unit 5 consists of 1,649 ac (667 ha) in Bay County, Florida. This unit encompasses essential features of beach mouse habitat within the boundaries of St. Andrew State Park mainland from 0.1 mile east of trailer park road east to the entrance channel of St. Andrew Sound, Shell Island east of the entrance of St. Andrew Sound east to East Pass, and West Crooked Island southwest of East Bay and east of the entrance channel of St. Andrew Sound, and areas from the MHWL north to the seaward extent of the maritime forest. Shell Island consists of State lands, Tyndall Air Force Base lands, as well as small private inholdings.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle maps Panama City, Beacon Beach, and Long Point, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E,N): 620962.07, 3334745.86; 620978.22, 3334694.43; 620963.77, 3334700.01; 620976.15, 3334719.99; 620956.7, 3334712.88; 620956.66, 3334745.41; 620948.27, 3334763.05; 620928.14, 3334789.51; 620941.26, 3334789.03; 620978.37, 3334767.36; 620984.33, 3334751.28; 620994.82, 3334745.55; 620996, 3334720.43; 620977.67, 3334704.34; 620978.22, 3334694.43.

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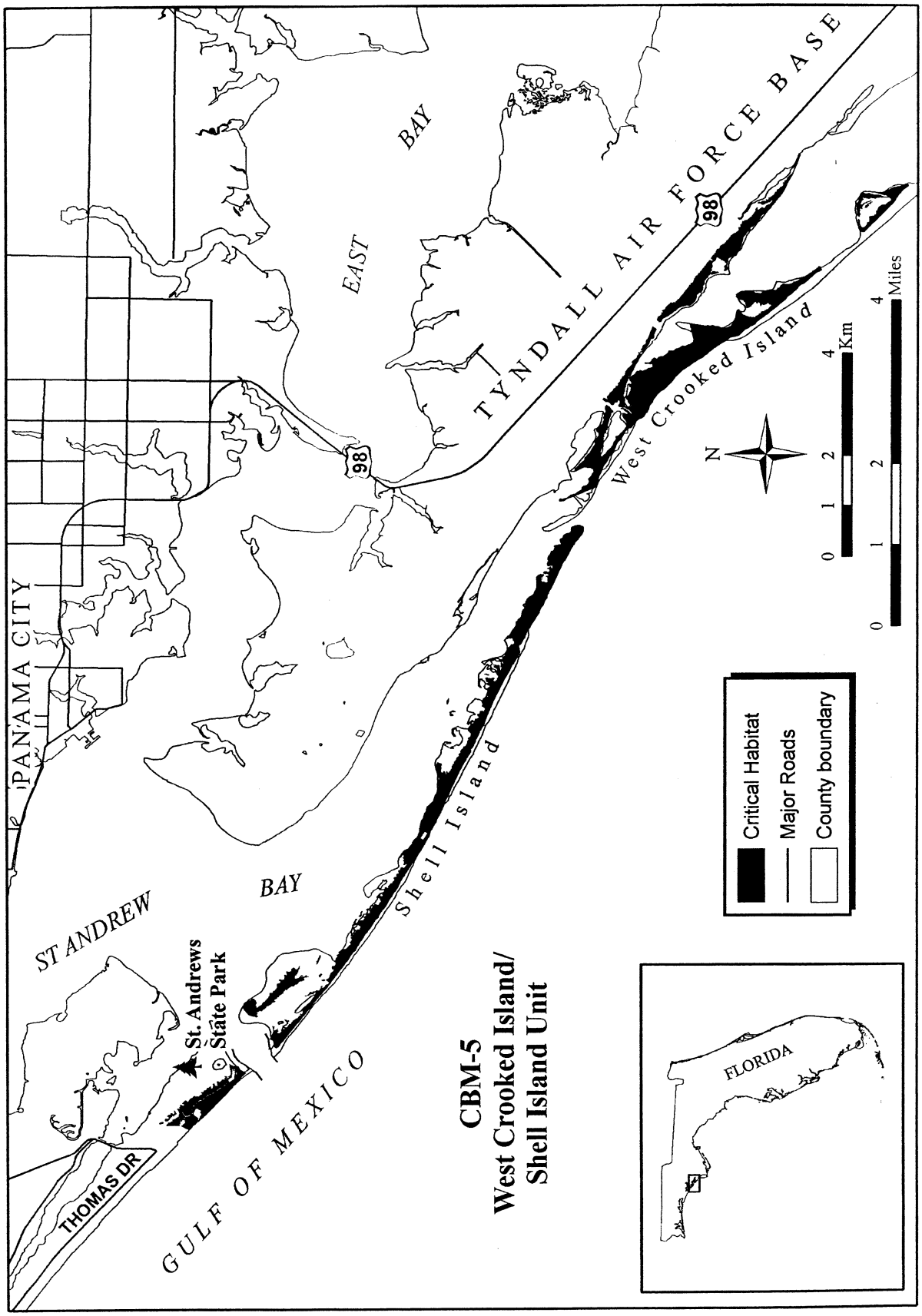
(iii) **Note:** Map 4 of Unit 5 follows:

BILLING CODE 4310–55–P

Proposed Critical Habitat (West Crooked Island/Shell Island Unit) for the Choctawhatchee beach mouse
Bay County, Florida



CBM-5
West Crooked Island/
Shell Island Unit

PERDIDO KEY BEACH MOUSE (*peromyscus polionotus trissyllepsis*)

(1) Critical habitat units are depicted for Escambia County, Florida, and Baldwin County, Alabama, on the maps below.

(2) The primary constituent elements of critical habitat for the Perdido Key beach mouse (PKBM) are the habitat components that provide:

(i) A contiguous mosaic of primary, secondary, and scrub vegetation and dune structure, with a balanced level of competition and predation and few or no competitive or predaceous nonnative species present, that collectively provide foraging opportunities, cover, and burrow sites;

(ii) Primary and secondary dunes, generally dominated by sea oats (*Uniola paniculata*), that, despite occasional temporary impacts and reconfiguration from tropical storms and hurricanes, provide abundant food resources, burrow sites, and protection from predators;

(iii) Scrub dunes, generally dominated by scrub oaks (*Quercus* spp.), that provide food resources and burrow sites, and provide elevated refugia during and after intense flooding due to rainfall and/or hurricane-induced storm surge;

(iv) Functional, unobstructed habitat connections that facilitate genetic exchange, dispersal, natural exploratory movements, and re-colonization of locally extirpated areas; and

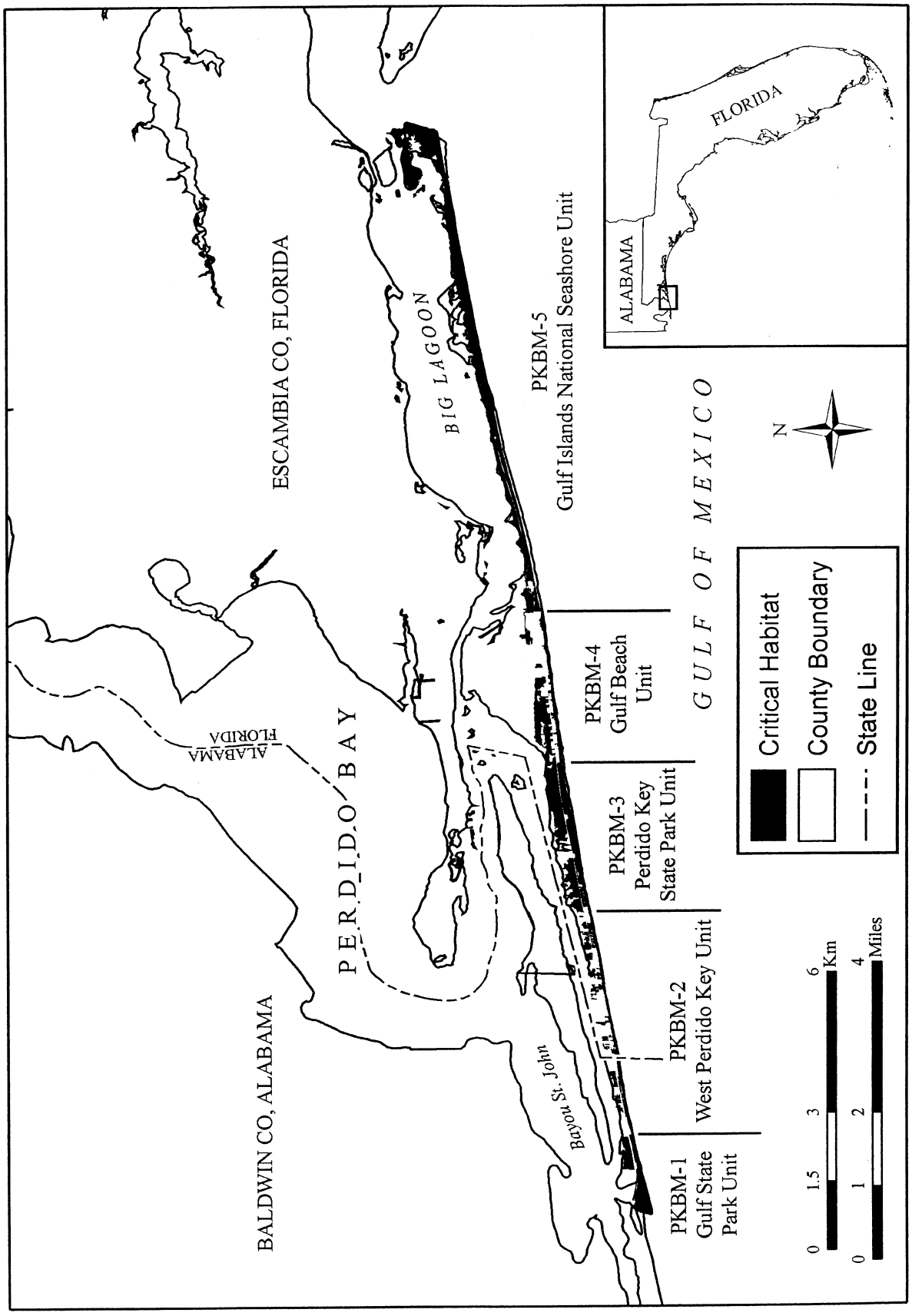
(v) A natural light regime within the coastal dune ecosystem, compatible with the nocturnal activity of beach mice, necessary for normal behavior, growth, and viability of all life stages.

(3) Critical habitat does not include man-made structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, driveways, and roads, and the land on which such structures are located.

(4) Critical Habitat Map Units. Data layers defining map units were created by delineating habitats which contained one or more of the primary constituent elements defined in paragraph (2), over 1999 and 2004 digital ortho photography at a scale of at least 1:4000.

(5) **Note:** Map 1—Index of Proposed Critical Habitat Units for the Perdido Key beach mouse follows:

Index of Proposed Critical Habitat Units for the Perdido Key Beach Mouse



BILLING CODE 4310–55–C

(6) PKBM—Unit 1: Gulf State Park Unit, Baldwin County, Alabama.

(i) *General Description:* Unit 1 consists of 115 ac (46 ha) in southern Baldwin County, Alabama, on the westernmost region of Perdido Key. This unit encompasses essential features of beach mouse habitat within the boundary of Gulf State Park from the west tip of Perdido Key at Perdido Pass east to approximately 1 mile west of where the Alabama-Florida state line bisects Perdido Key and the area from the mean high water line (MHWL) north to the seaward extent of the maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle map Orange Beach, Alabama, land bounded by the following UTM 16 NAD 83 coordinates (E,N): 447646.9, 3349472.01; 447492.27, 3349555.8; 447493.46, 3349550.54; 447492.6, 3349542.06; 447487.33, 3349540.88; 447466.1, 3349542.49; 447426.82, 3349545.78; 447375.87, 3349549.84; 447340.75, 3349556.4; 447277.86, 3349571.81; 447233.09, 3349583.43; 447195.9, 3349587.83; 447123.74, 3349592.44; 447082.29, 3349597.8; 447078.83, 3349609.34; 447082.64, 3349627.4; 447085.56, 3349638.04; 447109.06, 3349630.15; 447163.55, 3349611.36; 447228.62, 3349592.84; 447286.11, 3349581.52; 447357.41, 3349568.43; 447388.22, 3349564.94; 447403.2, 3349558.95; 447426.52, 3349558.45; 447454.05, 3349559.11; 447492.27, 3349555.8; 447753.29, 3349711.25; 447760.77, 3349736.04; 447763.66, 3349748; 447753.63, 3349752.12; 447755.48, 3349774.36; 447753.59, 3349787; 447754.47, 3349799.71; 447754.38, 3349820.32; 447753.74, 3349830.21; 447759.54, 3349836.69; 447811.82, 3349827.24; 447838.09, 3349825.09; 447856.72, 3349827.12; 447881.09, 3349821.36; 447907.36, 3349819.61; 447927.64, 3349818.91; 447956.65, 3349818.81; 447976.22, 3349830.77; 447992.63, 3349834.16; 448018.4, 3349831.12; 448037.09, 3349811.22; 448055.79, 3349802.71; 448074.4, 3349792.17; 448096.41, 3349792.7; 448114.76, 3349793.13; 448137.03, 3349782.68; 448148.04, 3349782.94; 448177.22, 3349790.96; 448191.45, 3349809.62; 448209.62, 3349817.37; 448223.94, 3349832.37; 448249.45, 3349840.3; 448279.8, 3349846.35; 448291.4, 3349859.7; 448311.29, 3349863.75; 448329.64, 3349864.19; 448368.33, 3349865.9; 448395.77, 3349862.11; 448408.04, 3349866.45; 448418.04, 3349851.65; 448427.89, 3349850.68; 448440.83, 3349857.72; 448448.65, 3349863.06; 448458.22, 3349861.71; 448474.31, 3349870.02; 448470.39, 3349848.77; 448469.37, 3349841.61; 448469.94, 3349834.09; 448470.06, 3349746.49; 448388.1, 3349722.76; 448274.81, 3349701.74; 448066.73, 3349652.82; 447964.62, 3349624.75; 447754.92, 3349599.15; 447753.29, 3349711.25; 446828.18, 3349177.08; 446788.74, 3349181.69; 446769.28, 3349208.86; 446767.28, 3349247.92; 446775.25, 3349280.06; 446782.18, 3349322.24; 446795.01, 3349350.69; 446801.51, 3349377.8; 446802.73, 3349409.54; 446811.99, 3349454.15; 446837.56, 3349514.61; 446896.76, 3349564.39; 446887.98, 3349582.41; 446896.11, 3349607.97; 446929.73, 3349630.57; 446953.02, 3349637.08; 446969.73, 3349626.62; 446984.14, 3349637.95; 446975.34, 3349650.69; 447000.06, 3349663.57; 447022.45, 3349657.76; 446993.88, 3349639.64; 446978.89, 3349585.37; 447068.47, 3349561.35; 447073.43, 3349586.44; 447084.44, 3349589.07; 447091.86, 3349585.59; 447128.34, 3349583; 447157.81, 3349580.13; 447188.5, 3349576.11; 447214.39, 3349573.56; 447263.87, 3349564.83; 447299.49, 3349553.79; 447327.56, 3349543.36; 447355.96, 3349535.32; 447401.54, 3349530.72; 447419.98, 3349527.5; 447464.09, 3349524.89; 447482.44, 3349525.33; 447508.12, 3349525.95; 447511.26, 3349547.99; 447515.63, 3349553.8; 447584.64, 3349549.75; 447669.02, 3349551.76; 447727.64, 3349556.83; 447771.68, 3349563.09; 447773.34, 3349543.71; 447819.71, 3349544.38; 447859.81, 3349556.32; 447908.03, 3349560; 447904.75, 3349580.93; 448004.65, 3349606.71; 448136.88, 3349636.19; 448391.19, 3349691.65; 448518.76, 3349723.23; 448524.37, 3349644.98; 448526.52, 3349626.07; 448221.97, 3349557.49; 447946.22, 3349481.14; 447525.39, 3349356.93; 447160.19, 3349255.19; 446914.86, 3349191.2; 446828.18, 3349177.08.

(7) PKBM—Unit 2: West Perdido Key Unit, Escambia County, Florida, and Baldwin County, Alabama.

(i) *General Description:* Unit 2 consists of 114 ac (46 ha) in southern Escambia County, Florida, and 33 ac (13 ha) in southern Baldwin County, Alabama. This unit encompasses essential features of beach mouse habitat from approximately 1 mile west of where the Alabama-Florida state line bisects Perdido Key east to 2 miles east of the state line and areas from the MHWL north to the seaward extent of human development or maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle maps Orange Beach, Alabama, and Perdido Bay, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E,N): 451993.83, 3350371.03; 452703.05, 3350634.99; 452704.03, 3350638.18; 452710.36, 3350639.39; 452712.53, 3350637.33; 452713.66, 3350634.18; 452713.79, 3350628.9; 452714.04, 3350618.34; 452713.24, 3350607.75; 452706.89, 3350607.6; 452702.62, 3350608.55; 452703.05, 3350634.99; 453782.71, 3350897.59; 453793.28, 3350898.9; 453796.56, 3350894.75; 453795.98, 3350874.65; 453797.45, 3350857.78; 453794.37, 3350853.47; 453785.62, 3350864.89; 453784.28, 3350876.49; 453782.71, 3350897.59; 450607.54, 3350204.19; 450615.96, 3350206.51; 450619.29, 3350200.25; 450619.64, 3350185.46; 450620.07, 3350167.5; 450618.16, 3350159; 450611.83, 3350157.79; 450608.58, 3350160.88; 450606.26, 3350169.28; 450608.12, 3350179.9; 450608.93, 3350190.49; 450608.77, 3350196.82; 450607.54, 3350204.19; 451881.55, 3350474.76; 451896.33, 3350477.22; 451896.6, 3350465.6; 451895.88, 3350451.84; 451894.09, 3350438.06; 451890.91, 3350437.98; 451891.01, 3350433.76; 451890.13, 3350426.34; 451883.8, 3350425.13; 451884.13, 3350455.79; 451882.76, 3350468.44; 451881.55, 3350474.76; 450624.43, 3350206.71; 450631.79, 3350209; 450631.94, 3350202.66; 450633.1, 3350198.46; 450633.38, 3350186.84; 450633.56, 3350179.45; 450632.65, 3350173.08; 450635.96, 3350167.88; 450645.46, 3350169.16; 450645.64, 3350161.77; 450640.5, 3350155.3; 450635.23, 3350154.12; 450629.86, 3350157.16; 450624.41, 3350163.37; 450622.51, 3350198.21; 450624.43, 3350206.71; 451488.8, 3350547.04; 451486.14, 3350528.67; 451481.23, 3350526.18; 451480.66, 3350531.56; 451479.21, 3350574.06; 451443.72, 3350573.86; 451444.14, 3350574.42; 451446.66, 3350577.81; 451450.92, 3350580.5; 451452.58, 3350585.93; 451485.88, 3350587.38; 451486.86, 3350582.65; 451496.61, 3350582.02; 451499.58, 3350575.62; 451488.8, 3350547.04; 450383.09, 3350287.25; 450382.53, 3350310.49; 450397.2, 3350317.18; 450408.85, 3350317.46; 450423.63, 3350319.93; 450436.31, 3350321.29; 450455.24, 3350327.02; 450458.47, 3350324.99; 450459.75, 3350315.5; 450444.98, 3350313.04; 450440.75, 3350312.94; 450440.97, 3350303.43; 450399.93, 3350291.88; 450383.09, 3350287.25; 453015.92, 3350797.85; 453023.26, 3350800.16; 453023.39, 3350794.88; 453031.86, 3350795.08; 453034.25, 3350783.51; 453044.87, 3350783.75; 453046.03, 3350735.15; 453019.66, 3350730.29; 453015.92, 3350797.85; 450422.77, 3350179.33; 450422.23, 3350201.51; 450422.66, 3350227.94; 450422.12, 3350250.13;

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(8) PKBM—Unit 3: Perdido Key State Park Unit, Escambia County, Florida.

(i) *General Description:* Unit 3 consists of 238 ac (96 ha) in southern Escambia County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Perdido Key State Park from approximately 2 miles east of the Alabama-Florida state line to 4 miles east of the state line and the area from the MHWL north to the seaward extent of the maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle map Perdido Bay, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E,N): 455621.62, 3351458.88; 453257.58, 3350904.44; 453254.26, 3350917.23; 453243.75, 3350913.81; 453240.29, 3350925.36; 453247.8, 3350930.76; 453266.31, 3350945.01; 453287.1, 3350948.75; 453293.56, 3350957.28; 453304.3,

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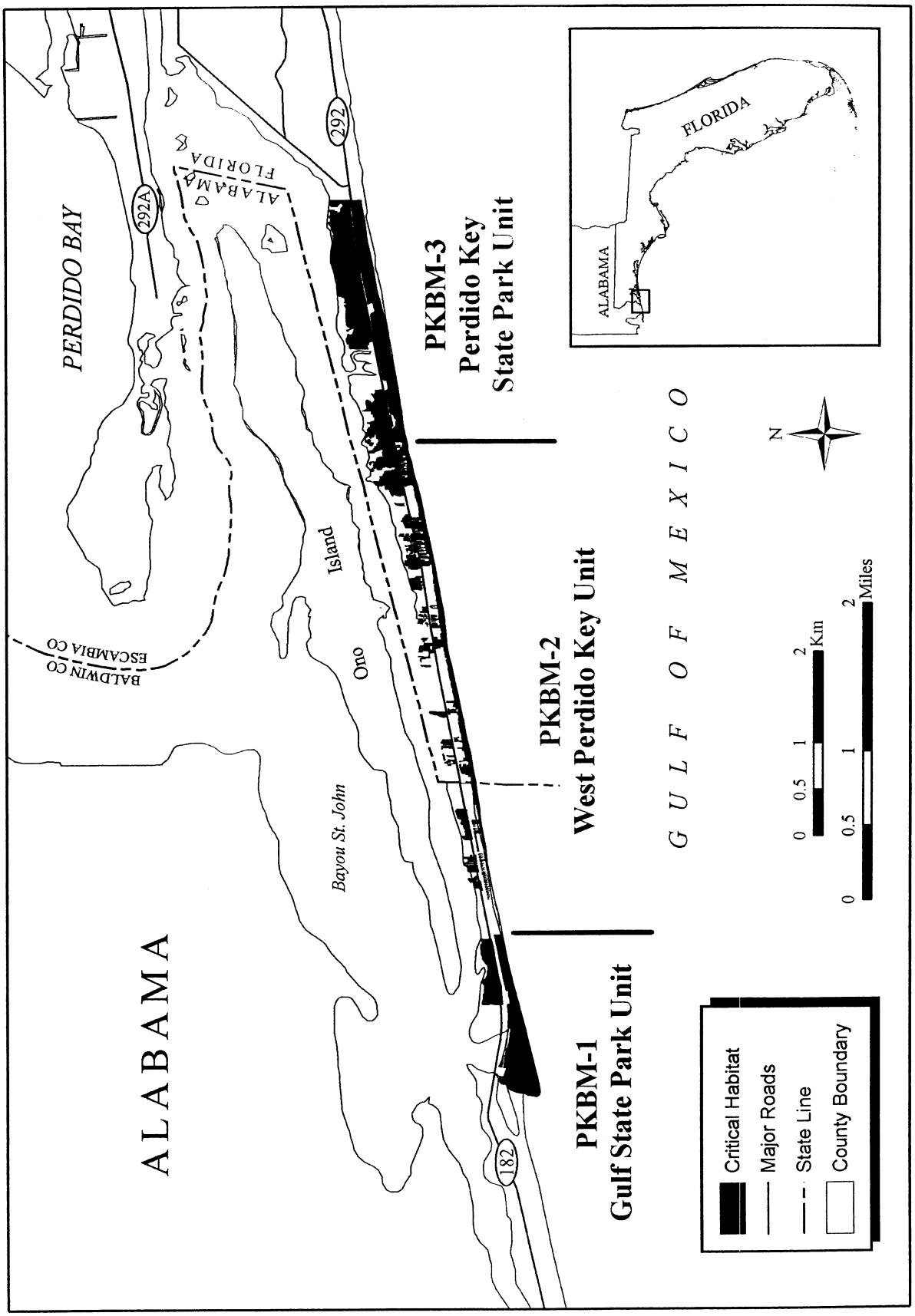
(iii) **Note:** Map 2 of Units 1, 2, and 3 follows:

BILLING CODE 4310–55–P

Proposed Critical Habitat Units (Gulf State Park, West Perdido Key, and Perdido Key State Park) for the Perdido Key beach mouse Baldwin Co., Alabama, Escambia Co., Florida



BILLING CODE 4310–55–C

(9) PKBM—Unit 4: Gulf Beach Unit, Escambia County, Florida.

(i) *General Description:* Unit 4 consists of 162 ac (66 ha) in southern Escambia County, Florida. This unit includes essential features of beach mouse habitat between Gulf Islands National Seashore and Perdido Key State Park from approximately 4 miles east of the Alabama-Florida State line to 6 miles east of the State line and areas from the MHWL north to the seaward extent of human development or maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle map Perdido Bay, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E,N): 457418.45, 3351766.05; 456424.33, 3351669.24; 456454.09, 3351669.95; 456460.85, 3351674.93; 456491.64, 3351678.43; 456523.29, 3351684.34; 456532.43, 3351694.62; 456550.37, 3351698.07; 456566.16, 3351685.76; 456578.84, 3351687.26; 456601.78, 3351691.77; 456612.31, 3351687.85; 456622.42, 3351676.01; 456635.18, 3351673.94; 456644.26, 3351676.53; 456637.88, 3351682.12; 456636.62, 3351690.54; 456647.33, 3351685.52; 456648.56, 3351695.66; 456653.7, 3351696.98; 456671.96, 3351681.16; 456634.44, 3351637.87; 456593.26, 3351588.26; 456571.55, 3351609.94; 456551.71, 3351597.83; 456536.99, 3351593.25; 456516.87, 3351592.77; 456495.54, 3351598.6; 456490.42, 3351591.08; 456473.22, 3351601.24; 456469.17, 3351593.74; 456464.83, 3351597.87; 456459.69, 3351591.4; 456455.4, 3351593.41; 456439.82, 3351580.36; 456444.21, 3351574.12; 456438.99, 3351570.82; 456444.42, 3351565.67; 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(10) PKBM—Unit 5: Gulf Islands National Seashore, Escambia County, Florida.

(i) *General Description:* Unit 5 consists of 602 ac (244 ha) in southern Escambia County, Florida, on the easternmost region of Perdido Key. This unit encompasses essential features of beach mouse habitat within the boundary of Gulf Islands National Seashore—Perdido Key Area (also referred to as Johnson Beach) from approximately 6 miles east of the Alabama-Florida State line to the eastern tip of Perdido Key at Pensacola Bay and the area from the MHWL north to the seaward extent of the maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle map Perdido Bay, and Fort Barrancas, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E,N): 464806.54, 3353248.09; 460167.32, 3352161.4; 460112.98, 3352141.46; 460076.54, 3352115.69; 460062.15, 3352097.38; 460032.76, 3352041.24; 460015.51, 3352024.29; 459999.54, 3352012.96; 459981.75, 3352007.62; 459961.62, 3352003.59; 459912.92, 3352002.9; 459885.33, 3352003.88; 459852.28, 3352012.6; 459823.72, 3352011.33; 459799.52, 3352004.41; 459708.84, 3352005.84; 459649.57, 3352006.1; 459651, 3352185.21; 459662.18, 3352177.93; 459676.32, 3352192.77; 459689.75, 3352206.83; 459690.56, 3352217.42; 459692.37, 3352230.15; 459701.27, 3352237.54; 459706.13, 3352230.01; 459707.87, 3352201.51; 459715.92, 3352173.67; 459726.9, 3352160.16; 459735.5, 3352155.08; 459753.65, 3352157.93; 459766.21, 3352155.82; 459768.17, 3352162.2; 459764.82, 3352169.52; 459771.02, 3352176.01; 459828.76, 3352173.6; 459847.49, 3352187.53; 459859.01, 3352171.16; 459890.74, 3352190.15; 459920.71, 3352199.2; 459961.02, 3352208.09; 459971.68, 3352244.02; 459986.72, 3352263.01; 459997.45, 3352279.12; 460011.09, 3352290.15; 460029.75, 3352290.6; 460041.81, 3352284.94; 460057.73, 3352267.49; 460066.23, 3352260.95; 460062.89, 3352234.71; 460077.34, 3352228.32; 460081.35, 3352243.48; 460099.25, 3352242.72; 460115.14, 3352209.8; 460127.02, 3352244.18; 460142.28, 3352237.41; 460142.29, 3352204.11; 460168.97, 3352186.72; 460167.32, 3352161.4; 464469.51, 3353268.58; 464465.93, 3353285.4; 464478.53, 3353289.94; 464496.58, 3353288.25; 464510.32, 3353289.64; 464517.47, 3353298.91; 464527.19, 3353293.22; 464538.68, 3353299.84; 464546.16, 3353303.93; 464551.08, 3353312.82; 464565.02, 3353310.56; 464583.88, 3353314.66; 464589.59, 3353306.59; 464608.58, 3353309.82; 464615.42, 3353324.93; 464620.04, 3353309.19; 464628.67, 3353300.39; 464636.93, 3353311.71; 464636.67, 3353322.27; 464655.48, 3353333.29; 464659.38, 3353347.13; 464669.74, 3353356.89; 464682.24, 3353365.65; 464695.6, 3353375.33; 464707.71, 3353364.14; 464724.85, 3353364.93; 464739.01, 3353370.82; 464756.44, 3353364.26; 464776.94, 3353348.89; 464801.65, 3353334.69; 464829.75, 3353355.45; 464822.89, 3353376.42; 464829.74, 3353397.97; 464852.31, 3353417.54; 464891.5, 3353430.92; 464926.62, 3353424.36; 464974.63, 3353410.72; 464999.13, 3353408.38; 465012.11, 3353413.85; 465010.83, 3353420.05; 465000.19, 3353421.91; 464993.74, 3353425.98; 464995.65, 3353434.49; 465008.36, 3353434.79; 465021.06, 3353435.1; 465024.37, 3353429.89; 465041.54, 3353420.79; 465063.75, 3353422.38; 465082.96, 3353416.5; 465106.39, 3353425.23; 465141.26, 3353442.2; 465160.15, 3353448.04; 465168.69, 3353447.09; 465177.29, 3353442.01; 465185.03, 3353428.46; 465205.15, 3353428.94; 465204.97, 3353436.33; 465190.44, 3353465.7; 465196.28, 3353470.59; 465200.62, 3353488.14; 465210.45, 3353476.09; 465228.25, 3353481.29; 465248.17, 3353476.99; 465264.92, 3353474.62; 465275.8, 3353483.04; 465282.37, 3353492.08; 465273.3, 3353505.74; 465268.06, 3353517.13; 465275.24, 3353526.82; 465280.25, 3353538.57; 465288.65, 3353541.94; 465301.66, 3353529.57; 465291.53, 3353510.3; 465320.61, 3353504.5; 465337.73, 3353507.58; 465349.22, 3353520.64; 465369.6,

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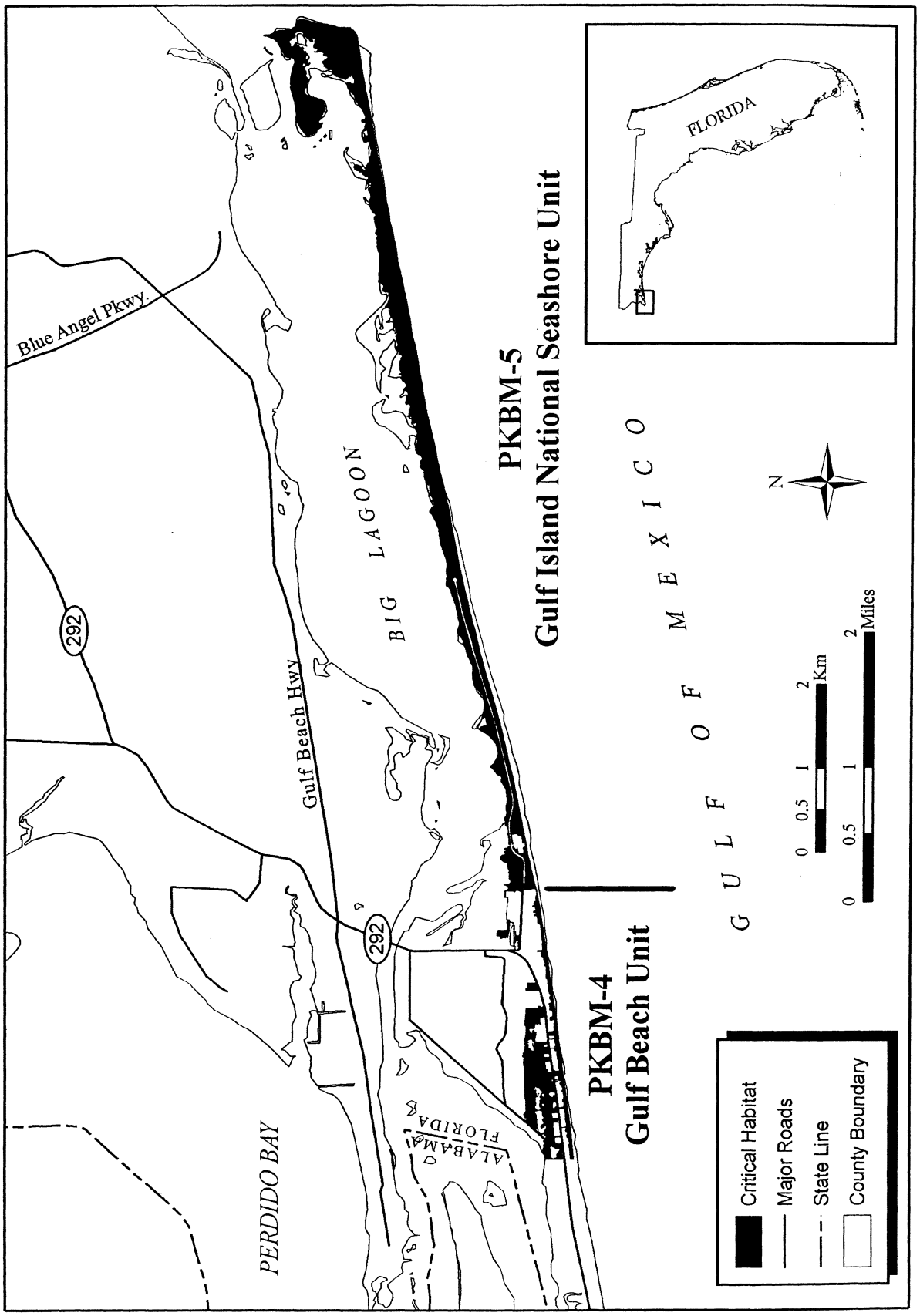
(iii) **Note:** Map 3 of Units 4 and 5 follows:

BILLING CODE 4310–55–P

Proposed Critical Habitat Units (Gulf Beach and Gulf Island National Seashore) for the Perdido Key beach mouse, Escambia Co., Florida



BILLING CODE 4310–55–C

* * * * *

ST. ANDREW BEACH MOUSE (*Peromyscus polionotus peninsularis*)

(1) Critical habitat units are depicted for Bay and Gulf Counties, Florida, on the maps below.

(2) The primary constituent elements of critical habitat for the St. Andrew beach mouse (SABM) are the habitat components that provide:

(i) A contiguous mosaic of primary, secondary, and scrub vegetation and dune structure, with a balanced level of competition and predation and few or no competitive or predaceous nonnative species present, that collectively provide foraging opportunities, cover, and burrow sites;

(ii) Primary and secondary dunes, generally dominated by sea oats (*Uniola paniculata*), that, despite occasional temporary impacts and reconfiguration from tropical storms and hurricanes, provide abundant food resources, burrow sites, and protection from predators;

(iii) Scrub dunes, generally dominated by scrub oaks (*Quercus* spp.), that provide food resources and burrow sites, and provide elevated refugia during and after intense flooding due to rainfall and/or hurricane-induced storm surge;

(iv) Functional, unobstructed habitat connections that facilitate genetic exchange, dispersal, natural exploratory movements, and re-colonization of locally extirpated areas; and

(v) A natural light regime within the coastal dune ecosystem, compatible with the nocturnal activity of beach mice, necessary for normal behavior, growth, and viability of all life stages.

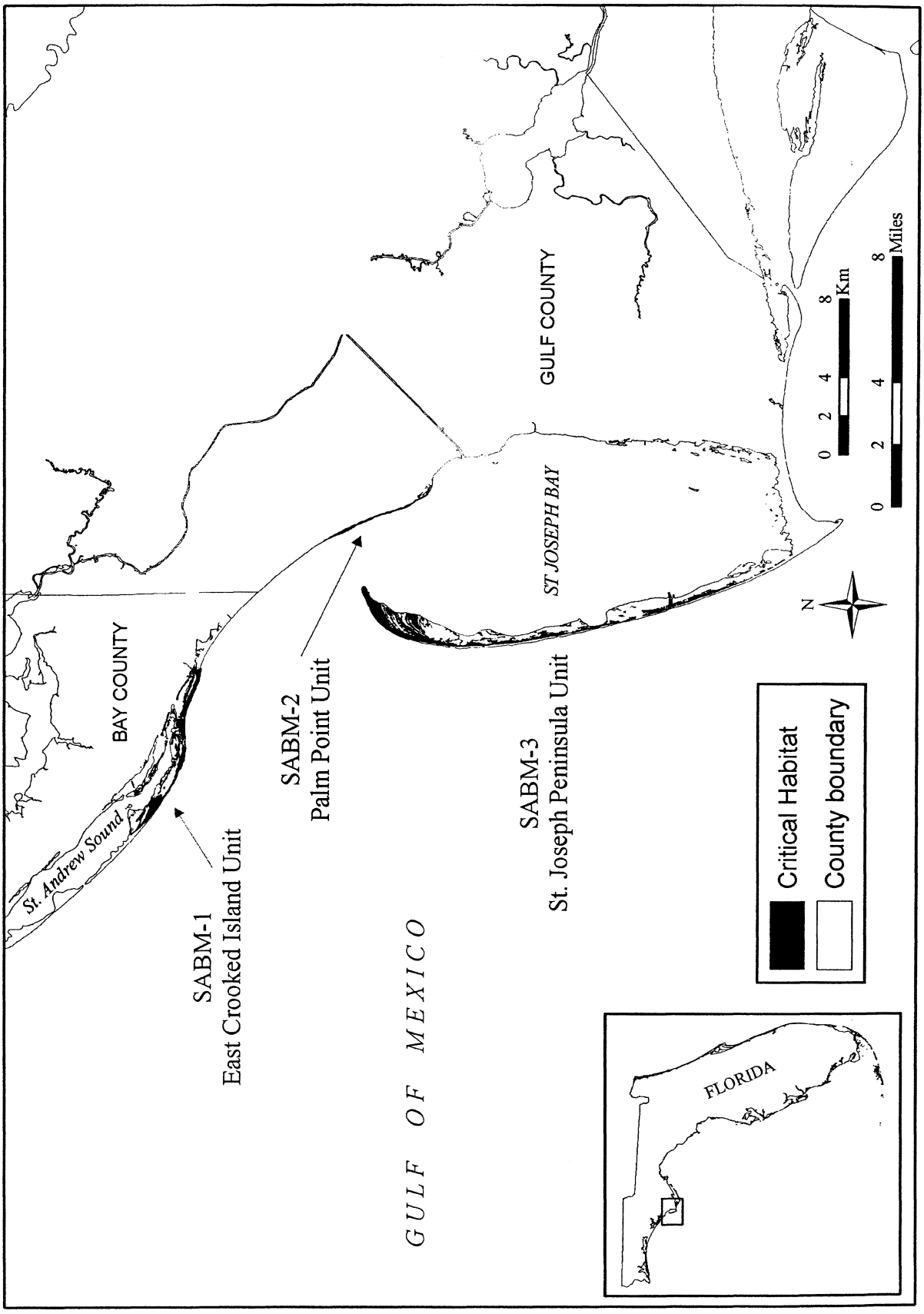
(3) Critical habitat does not include man-made structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, driveways, and roads, and the land on which such structures are located.

(4) *Critical Habitat Map Units.* Data layers defining map units were created by delineating habitats that contained one or more of the primary constituent elements defined in paragraph (2), over 1999 and 2004 digital ortho photography at a scale of at least 1:4000.

(5) **Note:** Map 1—Index Map of Critical Habitat Units for the St. Andrew beach mouse follows:

BILLING CODE 4310–55–P

Index of Proposed Critical Habitat Units for St. Andrew Beach Mouse



BILLING CODE 4310–55–C

(6) SABM—Unit 1: East Crooked Island, Bay County, Florida.

(i) *General Description:* Unit 1 consists of 970 ac (393 ha) in Bay County, Florida. This unit encompasses essential features of beach mouse habitat on East Crooked Island from the entrance of St. Andrew Sound to 1 mile west of Mexico Beach, including Raffield Peninsula, and the area from the mean high water level (MHWL) to the seaward extent of the maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle maps Crooked Island, and Beacon Hill, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E,N): 646283.88, 3315352.1; 649787.27, 3315506.32; 649787.92, 3315522.72; 649789.58, 3315557.88; 649799.35, 3315579.31; 649802.4, 3315493.45; 649787.27, 3315506.32; 642739.29, 3317721.73; 642749.68, 3317735.07; 642762.17, 3317744.5; 642776.8, 3317747.25; 642788.7, 3317748.34; 642809.86, 3317744.91; 642842.38, 3317747.71; 642861.45, 3317748.19; 642883.01, 3317744.38; 642926.47, 3317737.58; 642960.47, 3317734.21; 643028.95, 3317726.25; 643072.92, 3317732.51; 643102.42, 3317737.79; 643129.81, 3317744.82; 643162.4, 3317755.16; 643229.93, 3317767.43; 643268.78, 3317782.15; 643325.83, 3317789.93; 643348.81, 3317794.17; 643361.18, 3317792.5; 643377.79, 3317780.24; 643407.93, 3317782.98; 643530.15, 3317807.07; 643585.4, 3317816.03; 643613.02, 3317815.1; 643648.58, 3317823.53; 643684.79, 3317825.93; 643706.83, 3317834.42; 643711.85, 3317821.16; 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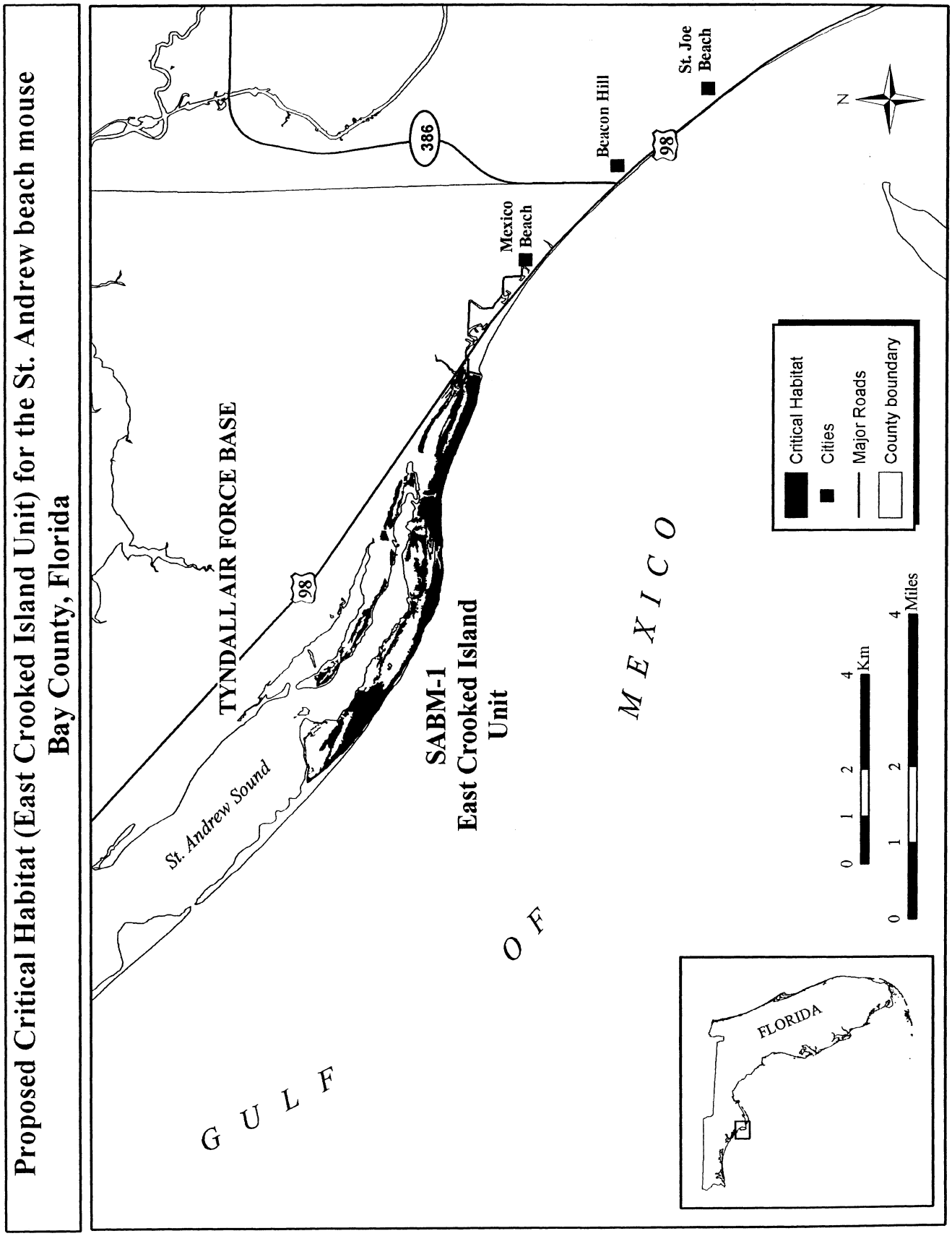
(iii) **Note:** Map 2 of Unit 1 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(7) SABM—Unit 2: Palm Point Unit, Gulf County, Florida.

(i) *General Description:* Unit 2 consists of 139 ac (56 ha) in Gulf County, Florida. This unit encompasses habitat from Palm Point 1.25 miles northwest of the inlet of the Gulf County Canal to St. Joe Beach and the area from the MHWL to the seaward extent of the maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle maps Overstreet, and Port St. Joe, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E,N): 659796.42, 3305196.68; 660907.34, 3303158.99; 660909.34, 3303174.1; 660917.79, 3303164.76; 660905.4, 3303151.76; 660907.34, 3303158.99; 660636.45, 3303536.2; 660640.61, 3303544.63; 660657.52, 3303536.33; 660657.64, 3303531.57; 660663.36, 3303509.92; 660675.54, 3303489.26; 660665.45, 3303490.15; 660657.61, 3303490.79; 660645.12, 3303507.88; 660638.21, 3303529.5; 660631, 3303531.7; 660636.45, 3303536.2; 660753.22, 3303305.28; 660770.07, 3303317.79; 660776.95, 3303315.44; 660780.34, 3303322.66; 660787.9, 3303322.45; 660789.33, 3303313.37; 660788.37, 3303303.83; 660796.56, 3303294.53; 660812.8, 3303281.06; 660828.08, 3303269.91; 660834.67, 3303260.96; 660849.39, 3303244.68; 660855.21, 3303234.92; 660850.57, 3303229.65; 660843.08, 3303227.08; 660838.41, 3303243.26; 660821.91, 3303251.17; 660817.29, 3303260.96; 660810.82, 3303265.16; 660804.26, 3303272.92; 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(8) SABM—Unit 3: St. Joseph Peninsula, Gulf County, Florida.

(i) *General Description:* Unit 3 consists of 1,501 ac (607 ha) in Gulf

County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of St. Joseph Peninsula State Park (Park) as well as south of the Park to the peninsula's constriction north of Cape San Blas (also known as the ''stumphole'' region) and area from the MHWL to the seaward extent of the maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle maps Beacon Hill, St. Joseph Point, St. Joseph Peninsula, Cape San Blas, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E,N): 655701.41, 3289444.44; 655563.64, 3289904.3; 655566.88, 3289886.15; 655573.99, 3289872.46; 655577.86, 3289860.67; 655599.16, 3289867.54; 655630.56, 3289867.94; 655639.95, 3289873.72; 655642.12, 3289882.5; 655646.73, 3289888.96; 655648.92, 3289896.54; 655666.68, 3289901.74; 655684.38, 3289862.16; 655703.42, 3289816.66; 655719.54, 3289776.64; 655758.42, 3289685.27; 655724.83, 3289677.29; 655706.23, 3289673.66; 655707.11, 3289686.36; 655712.46, 3289694.82; 655710.46, 3289705.45; 655703.43, 3289706.09; 655702.37, 3289716.36; 655707.41, 3289721.64; 655707.94, 3289731.96; 655702.12, 3289742.12; 655694.38, 3289749.45; 655707.49, 3289765.64; 655687.78, 3289774.65; 655679.46, 3289789.11; 655668.51, 3289813.41; 655653.23, 3289836.01; 655626.23, 3289819.08; 655644.29, 3289780.69; 655633.94, 3289781.23; 655625.75, 3289775.07; 655624.47, 3289762.76; 655633.87, 3289752.69; 655624.25, 3289739.76; 655630.94, 3289726.85; 655636, 3289715.48; 655644.52, 3289708.57; 655643.19, 3289698.23; 655643.89, 3289686.35; 655650.79, 3289680.58; 655650.2, 3289672.64; 655640.92, 3289662.1; 655643.89, 3289654.65; 655648.92, 3289644.47; 655642.66, 3289640.74; 655639.22, 3289635.11; 655597.13, 3289617.01; 655591.32, 3289626.77; 655584.2, 3289625.4; 655582.77, 3289619.02; 655568.4, 3289605.58; 655580.45, 3289584.88; 655597.74, 3289593.24; 655605.88, 3289601.37; 655603.25, 3289610.82; 655636.65, 3289626.72; 655648.97, 3289627.03; 655641.77, 3289612.98; 655635.21, 3289604.89; 655628.46, 3289588.86; 655633.24, 3289572.73; 655653.88, 3289574.05; 655669.73, 3289576.03; 655698.95, 3289584.3; 655709.87, 3289577.04; 655723.5, 3289588.08; 655788.29, 3289620.23; 655820.17, 3289538.6; 655848.15, 3289469.94; 655886.33, 3289390.45; 655894.52, 3289365.29; 655906.16, 3289345.37; 655934.16, 3289322.69; 655935.76, 3289323.55; 655935.63, 3289310.24; 655931.91, 3289317.48; 655919.27, 3289314.39; 655935.21, 3289269.88; 655929.57, 3288719.84; 655922.07, 3288746.5; 655903.78, 3288794; 655868.62, 3288863.66; 655850.75, 3288909.98; 655836.63, 3288965.51; 655831.18, 3288992.32; 655806.89, 3289041.25; 655787.41, 3289088.32; 655773.35, 3289141.08; 655747.87, 3289205.44; 655722.41, 3289253.55; 655707.05, 3289294.78; 655682.75, 3289344.1; 655632.18, 3289457.37; 655604.69, 3289538.33; 655574.82, 3289556.2; 655556.11, 3289604.08; 655539.79, 3289683.73; 655525.21, 3289741.63; 655508.96, 3289770.94; 655485.78, 3289838.53; 655484.05, 3289859.89; 655476.66, 3289885.07; 655467.68, 3289909.81; 655467.06, 3289912.69; 655553.51, 3289913.91.

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(iii) **Note:** Map 3 of Units 2 and 3 follows:

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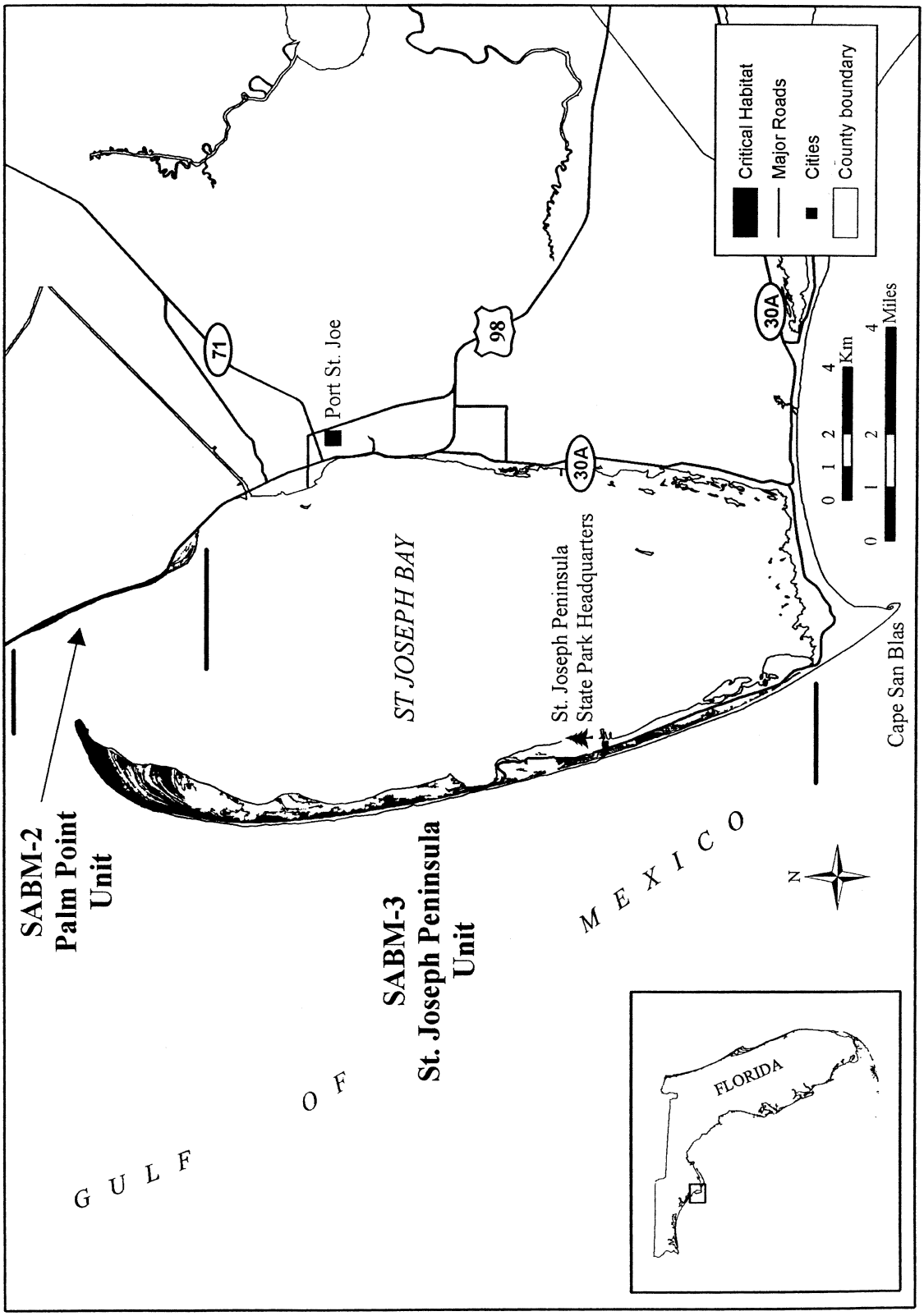
Proposed Critical Habitat (Palm Point, and St. Joseph Peninsula Units) for the St. Andrew beach mouse, Gulf County, Florida



Dated: November 30, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–23695 Filed 12–14–05; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Thursday,
December 15, 2005

Part III

Environmental Protection Agency

40 CFR Part 80

Regulation of Fuels and Fuel Additives: Modifications to Standards and Requirements for Reformulated and Conventional Gasoline Including Butane Blenders and Attest Engagements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[OAR–2003–0019 FRL–8006–5]

RIN 2060–AK77

Regulation of Fuels and Fuel Additives: Modifications to Standards and Requirements for Reformulated and Conventional Gasoline Including Butane Blenders and Attest Engagements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on certain modifications to the reformulated and conventional gasoline regulations. Based on experience gained since the promulgation of these regulations, EPA proposed these modifications along with various others in a Notice of Proposed Rulemaking (NPRM) published on July 11, 1997. In final rules published on December 31, 1997, and December 28, 2001, EPA took final action on several of the modifications proposed in the July 11, 1997 NPRM. Today's direct final action would finalize many of the remaining proposed modifications.

The modifications in today's direct final rule correct technical errors, clarify certain provisions, and codify guidance previously issued by the Agency. This rule also makes several minor technical corrections to the RFG rule which were not included in the July 11, 1997 proposal, and makes two minor technical corrections to the Tier 2 gasoline sulfur rule. The emissions benefits achieved from the RFG and conventional gasoline programs will not be reduced as a result of this direct final rule.

DATES: This rule will be effective on March 15, 2006 without further notice except to the extent that we receive adverse comment by February 13, 2006. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the portion of the final rule which received adverse comment will not take effect.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2003–0019. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Submit your comments, identified by Docket ID No. OAR–2003–0019 by one of the following methods:

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

2. *Agency Web site: http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

3. *E-mail: http://www.epa.gov/docket*, attention ID No. OAR–2003–0019

4. *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6406J, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of 2 copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

5. *Hand Delivery:* EPA Docket Center, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, Mail Code: 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2003–0019. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

FOR FURTHER INFORMATION CONTACT: Marilyn Bennett, Transportation and Regional Programs Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., (6406J), Washington, DC 20460; telephone: (202) 343–9624; fax: (202) 343–2803, e-mail address: mbennett@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule as a Direct Final Rule because we view this action to be noncontroversial and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this Direct Final Rule if adverse comments are filed. This rule will be effective on March 15, 2006 without further notice except to the extent that we receive adverse comment by February 13, 2006. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the portion of the rule on which adverse comment was received will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of today's rule for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct

amendment, paragraph, or section of today's rule.

I. General Information

A. Does This Action Apply to Me?

Entities potentially affected by this action include those involved with the production and importation of gasoline motor fuel. Regulated categories and entities affected by this action include:

Category	NAICS codes [a]	SIC codes [b]	Examples of regulated entities
Industry	324110	2911	Petroleum Refiners, Importers.
Industry	422710, 422720	5171, 5172	Gasoline Marketers and Distributors.
Industry	484220, 484230	4212, 4213	Gasoline Carriers.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, Subparts D, E and F, of title 40 of the Code of Federal Regulations. If you have questions regarding applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Outline of This Rule

I. General Information
II. Corrections of Typographical Errors and Minor Revisions
III. RFG and Anti-dumping Standards/Models
A. Effective Dates for Standard Changes Due to Survey Failures
B. Proper E300 Value for the Edge Target Fuel for Use in Complex Model Extrapolation
IV. RFG Compliance Requirements
A. Clarifications of Requirements to Test RFG and RBOB
B. Transfer of Credits
C. Compliance Survey Requirements
D. Product Transfer Documentation (PTD)
E. Exemption for Gasoline Used for Aviation and Racing Purposes
F. References to Renewable Oxygenate Requirements
G. Butane Blending
H. Gasoline Treated as Blendstock (GTAB)
V. Anti-Dumping Requirements
A. Imports of Gasoline by Truck
B. Date for Submission of Attest Engagement Reports
VI. Attest Engagements
A. Modification to Agreed-Upon Procedures in §§ 80.128 and 80.129, and Promulgation of Agreed-Upon Procedures in §§ 80.133 and 80.134
B. Attest Procedures for GTAB, Previously Certified Gasoline (PCG), Truck Importers and Butane Blenders
VII. Public Participation
VIII. Statutory and Executive Order Reviews
IX. Statutory Provisions and Legal Authority

C. Modification of Provisions

Some of the provisions in today's rule may be modified in a future rulemaking to reflect a recent Congressional mandate requiring the removal of the RFG oxygen requirement.[1]

II. Corrections of Typographical Errors and Minor Revisions

In the July 7, 1997 Notice of Proposed Rulemaking (NPRM), EPA proposed the following corrections of typographical errors and minor revisions to the RFG and conventional gasoline regulations. EPA received either favorable or no comments on these changes. We are aware of no new information or circumstances arising since the proposal that would be likely to substantially change the impact or significance of these changes. Today's rule would finalize these changes as proposed.

§ 80.2(ww)	Adds a definition of ''Gasoline Treated as Blendstock'' or ''GTAB,'' which is imported gasoline that is excluded from the import facility's compliance calculations, but is treated as blendstock in a related refinery that includes the GTAB in its refinery compliance calculations.
§ 80.2(ee)	Revises the definition of reformulated gasoline to delete the reference to a gasoline marker under § 80.82, since the current regulations do not include a requirement for a conventional gasoline marker.
§ 80.49(a)	Corrects an incorrect reference to § 80.43(c). The correct reference is § 80.49(a)(5)(i).
§ 80.49(a)(1)	Corrects a typographical error in the formula at the bottom of the new parameter under Fuel 2. Change is from ''C+B/2'' to ''(C+B)/2.''
§ 80.49(a)(3)	Corrects an incorrect reference to § 80.43(c). The correct reference is to § 80.49(a)(5)(i).
§ 80.49(b)	Corrects an incorrect reference to § 80.43(c). The correct reference is § 80.49(a)(5)(i).
§ 80.50(a)(2)	Corrects an incorrect reference to § 80.49(a). The correct reference is § 80.49(b).
§ 80.65(e)(2)(ii)(B)	Revises to correct an inadvertent omission of the word ''importer'' in the first sentence.
§ 80.65(g)	Revises to delete heading: ''Marking of conventional gasoline,'' since the regulations do not include provisions for requiring a conventional gasoline marker.
§ 80.68(b)(2)(ii)	Revises the word ''area'' to read ''area(s)'' to clarify the application of the equation to a situation in which more than one area fails a survey or survey series in a single year.
§ 80.69(a)(4)	Revises to delete this provision. This provision requires refiners and importers to determine the properties of reformulated gasoline blendstock for oxygenate blending (RBOB) which are sufficient to allow parties downstream from the refinery or importer to establish, through sampling and testing, if the RBOB has been altered or contaminated such that it will not meet the applicable RFG standards subsequent to the addition of the specified type and amount of oxygenate. This provision was intended to facilitate downstream quality assurance programs, however, since most RBOB is transported in a fungible manner, we believe there is little value to this requirement.
§ 80.69(e)(2)(i)(A)	Corrects a typographical error. The word ''to'' was inadvertently omitted in the final rule.
§ 80.69(e)(2)(v)	Corrects an incorrect reference to § 80.70(b)(2)(i). The correct reference is § 80.65(e)(2)(i).

[1] Energy Policy Act of 2005, Public Law 109–58 (HR6), § 1504, 119 STAT 594, 1076–1077 (2005).

§ 80.75(a)	Revises to require refiners, importers and oxygenate blenders to include notification to EPA of per-gallon versus average election with the first quarterly reports submitted each year, in accordance with the provisions of § 80.65(c)(3) which require refiners, importers and oxygenate blenders to designate whether, for a given parameter, all batches of gasoline are being subject to the per-gallon or average standards.

The following technical corrections are also being made to the fuels regulations in 40 CFR Part 80. Although these corrections were not previously proposed, they are not substantive in nature and do not change the requirements of the fuels programs.

§ 80.2(c)	Revises footnote 1 in § 80.2(c) to include the Northern Mariana Islands in the definition of ''State'' under 40 CFR Part 80, in accordance with the definition of ''State'' in § 301(d) of the Clean Air Act. The exclusion of the Northern Mariana Islands from the list of U.S. territories in footnote 1 is an oversight in the current regulations.
§ 80.45(d)(1)(iv)(B)	Reinstates regulatory text inadvertently deleted from the Code of Federal Regulations (CFR) when certain changes were made to this section pursuant to a rulemaking on December 31, 1997 (62 FR 6819).
§ 80.65(d)(2)(iii)	Removes and reserves this section. This section relates to the oxygenated fuels program requirements (OPRG), which were eliminated by rulemaking on November 6, 1997 (62 FR 50132).
§ 80.74(b)(2)	Deletes the requirement to retain results of a test for the presence of a gasoline marker. The current regulations do not include a requirement for a gasoline marker.
§ 80.74(f)	Revises to remove and reserve this paragraph since the regulations do not include provisions for requiring a conventional gasoline marker.
§ 80.75(f)(2)(ii) and (f)(2)(iii)	Revises to delete references to OPRG requirements which have been eliminated.
§ 80.76(b)	Revises to delete reference to ''applicable blendstocks,'' since all requirements relating to applicable blendstocks have been eliminated.
§ 80.78(a)(1)(iii)	Deletes this provision since it relates to OPRG requirements which have been eliminated.
§ 80.78(a)(11)	Revises to correct an incorrect reference to § 80.78(a)(8). The correct reference is § 80.78(a)(7).
§ 80.78(a)(3)	Deletes the prohibition against manufacturing and selling or distributing, or offering for sale or distribution, dispensing, supplying, or offering for supply, storing, transporting or causing the transportation of gasoline represented as conventional gasoline which does not contain a gasoline marker. The current regulations do not include a requirement for a gasoline marker.
§ 80.81(c)(4)	Revises to delete this provision as it pertains to a conventional gasoline marker requirement and the regulations do not include provisions for a gasoline marker.
§ 80.101(g)(9)	Revises to delete references to the blendstock tracking and accounting requirements of § 80.102, which have been eliminated.
§ 80.410(f)(4)(ii)	Corrects an incorrect reference to § 80.65(e)(2)(iii). The correct reference is § 80.65(f)(2)(iii).
§ 80.410(r)(1)(iv)	Corrects an incorrect reference to § 80.410(f)(3)(iii). The correct reference is to § 80.410(f)(4)(iii).

III. RFG and Anti-dumping Standards/Models

A. Effective Dates for Standard Changes Due to Survey Failures

Under § 80.41(p), when a minimum or maximum per-gallon RFG standard is changed to be more stringent as a result of a survey failure, the effective date for the new standard is ninety days after EPA announces the new standard. In the NPRM, we determined that additional time is needed because of the lag time between the date refiners and importers begin producing gasoline to a new standard and the date this gasoline displaces the earlier gasoline through the distribution system. As a result, we proposed the following effective dates on which the new standard would be required after the date EPA announces the new standard: 60 days for gasoline produced at a refinery or imported by an importer; 120 days for facilities downstream of the refinery or importer other than retail outlets and wholesale purchaser-consumers; and 150 days for retail outlets and wholesale purchaser-consumers. Under this approach, refiners and importers would have approximately two months to begin meeting the new standard, downstream parties such as terminal operators would have about two months to transition to the new standard after shipments of gasoline meeting the new standard begin, and retailers and wholesale users would have about one month to transition after terminals must begin shipping gasoline meeting the new standard. We believed the times proposed for these stages were consistent with current industry practice for transitioning to new standards, such as the transition to meet the summertime high ozone season VOC standards each spring. However, as discussed below, in response to the comments on the proposal, we now believe that a somewhat longer transition time is needed.

One commenter supported the proposal. However, two commenters said that the proposal does not allow sufficient time for parties to make the transition to a new standard following a survey failure. One of the commenters noted that prior EPA guidance allowed 90 days at the refinery gate and an additional 90 days at all downstream locations. See ''Surveys,'' RFG/Anti-dumping Questions and Answers, November 12, 1996. Another commenter said that refiners need at least 90 days to allow time to plan, renegotiate supply contracts, and make refining/distribution adjustments necessary to comply with the new standard.

We agree with the commenters that additional time may be necessary for refiners to a make the transition to the new standard in the event of a standard change due to a survey failure. Unlike the transition to the VOC standard which occurs each year, a new standard due to a survey failure may not be anticipated in sufficient time for refiners make necessary adjustments. As a result, we have determined that the effective dates for standard changes due to a survey failure, expressed in the number of days after the date EPA announces the new standard, will be as follows: 90 days for gasoline produced at a refinery or imported by an importer; 150 days for facilities downstream of the refinery or importer other than retail outlets and wholesale purchaser-consumers; and 180 days for retail outlets and wholesale purchaser-

consumers. This structure is consistent with the prior guidance issued by EPA which allowed 90 days for refiners and importers and 180 days for downstream parties, but also provides for a 30-day transition period from the terminals to the retail outlets and wholesale purchase-consumers. We believe that a 30-day period is necessary for retail outlets to turnover over their gasoline supply. Requiring a 30-day turnover period between terminals and retailers/wholesale purchaser consumers is consistent with the current provisions for transitioning to VOC controlled RFG each spring, which require terminals to meet the VOC control standard beginning on May 1 each year, and retailers and wholesale purchaser-consumers to meet the VOC control standard beginning on June 1.

B. Proper E300 Value for the Edge Target Fuel for Use in Complex Model Extrapolation

The Complex Model as described in § 80.45 includes provisions for extrapolations beyond the limits of the data upon which the model was based. The limits of the data define the ''allowable range'' which represents the range of fuel parameters within which the Complex Model equations are directly applicable, and outside of which extrapolation must be used up to the limits of the model.[2] These extrapolations take the form of intricate equations and a series of conditions for use of those equations. Among other things, the conditions associated with extrapolation direct Complex Model users to determine properties for an ''edge target fuel.'' The edge target fuel is equivalent in all respects to the target fuel, except that no fuel parameters are allowed to exceed the limits of the allowable range. In effect, the edge target fuel represents the point in the multi-dimensional fuel parameter space where extrapolation begins.

The Complex Model equation for exhaust volatile organic compounds (VOCs) contained in § 80.45(c)(1) includes a single interactive term. This term, the product of E300 and aromatics, necessitates that extrapolations involving E300 include a simultaneous evaluation of the aromatics level of the target fuel. Thus, in paragraph (c)(1)(iv)(C)(6), Complex Model users are directed to determine whether the mathematical phrase [80.32 + (−.390xARO)] is greater or less than 94, and to set the E300 edge target fuel value accordingly. In so doing, users are determining whether the aromatics-dependent E300 extrema (i.e., curve turnover) point falls beyond the limits of the available data in the Complex Model database.

However, the language in paragraph (c)(1)(iv)(C)(*6*) is misleading. As currently written, the user is directed to set the E300 value of the edge target fuel at 94 vol% whenever the value of the phrase [80.32 + (0.390xARO)] is greater than 94. The Agency's intention, however, was that this step be taken only if the E300 term is being extrapolated. In other words, if the target fuel value for E300 falls below the higher limit for E300 in the allowable range as defined in Table 6, § 80.45(c)(1)(iv), then E300 is not being extrapolated, and the E300 value of the edge target fuel should be equal to the E300 value of the target fuel.

To correct this problem, we proposed to modify the provisions in § 80.45(c)(1)(iv)(C)(*6*) and § 80.45(c)(1)(iv)(D)(*6*) to clarify that Complex Model users should only set the E300 value of the edge target fuel equal to 94 if the target fuel value for E300 exceeds the higher limit specified in § 80.45(c)(1)(iv), Table 6.

We previously received no comments on this change. Today's rule would finalize this change as proposed.

IV. RFG Compliance Requirements

A. Clarification of Requirements to Test RFG and RBOB

Section 80.65(e)(1) requires refiners and importers to determine the properties of each batch of RFG that is produced or imported. This determination is required for each parameter relevant to the RFG standards. We previously proposed to modify § 80.65(e)(1) to add language to clarify that this section applies to RBOB as well as to RFG. We also proposed to add a cross reference to § 80.69(a), which requires the certified properties of RBOB to be the properties of the RBOB subsequent to downstream blending with oxygenate, based on test results of a sample of the RBOB hand blended in the laboratory with the appropriate oxygenate type and amount. We believe the certification of RBOB already is implicit in § 80.65(e), and that refiners and importers have been certifying and reporting the properties of RBOB based on the analysis results of a hand blend. In addition, we proposed to clarify that testing for RVP is necessary only for RFG and RBOB that is designated as VOC controlled, because RVP test results are relevant only to VOC controlled gasoline (for non-VOC controlled gasoline, the Complex Model uses an RVP value of 8.7 psi regardless of the actual RVP value of the gasoline.) Today's rule also clarifies that the volume as well as the properties of each batch of gasoline must be determined. We received no comments on these clarifications and today's rule would finalize them as proposed.

B. Transfer of Credits

Section 80.67(h)(1)(iv) allows oxygen and benzene credits to be transferred directly from the party who generates them to the party who uses the credits for compliance purposes. We have received several inquiries with regard to whether transfers within the same company are covered under this section. We believe that a party may properly transfer legitimate credits within the company or outside of the company. As a result, we proposed to clarify that credit transfers may be either inter-company or intra-company. We received no comments on this clarification and today's rule would finalize it as proposed.

C. Compliance Survey Requirements

1. Method of Computation for Averages in Survey Series

The RFG rule affords refiners the flexibility to comply with the RFG standards on a refinery annual average basis, as opposed to requiring each refinery to comply based on the quality of its gasoline sold in a particular covered area. The RFG surveys are designed to ensure that this flexibility does not result in a covered area receiving gasoline that on average differs in quality from the average gasoline quality that would occur if averaging were required separately for each covered area. The surveys are conducted by an industry association according to a statistical sampling plan approved by EPA and involve sampling gasoline from retail outlets. If the gasoline in an area fails to meet standards set forth in the regulations for a particular parameter, the standards for that parameter are made more stringent and the number of surveys that must be conducted in the following year is increased.

Some of the gasoline characteristics evaluated by the survey are chiefly of interest because of their role in causing or contributing to ambient ozone levels. Surveys for these parameters (e.g., VOC surveys) are passed or failed based upon the average of results from a week-long survey. Other parameters (like benzene and toxics) are of concern because of their cumulative effects over a longer

[2] The allowable range of the model is, in fact, a combination of the limits of the data and additional limitations that may be imposed by the existence of extreme, or curve turnover points.

period of time. Surveys for these latter characteristics are passed or failed based upon the average of a year-long series of one-week surveys. The revisions to § 80.68 in today's rule relate to how the average of such a series of one-week surveys should be computed.

Under the current regulations, determining the average for each survey series [3] involves computation of a simple average [4] of parameter values from each gasoline sample across all of the samples gathered during the year (without any consideration of which week-long survey the sample was a part). If all of the individual week-long surveys had equal sample sizes, this approach to computation would yield as good a representation of the fuel supply as the timing and distribution of the week-long surveys throughout the year permitted.[5] Practical considerations involved in the design and conduct of an efficient overall survey operation, though, dictate some substantial variations in sample size among the week-long surveys. One such effect, and probably the most important one, stems from the fact that high-ozone season surveys for ozone precursors must yield a confidence interval on the mean small enough to meet the precision requirements of the regulations (§ 80.68(c)(13)(iii)) for each individual survey. Since practical considerations dictate that surveys for the various parameters be conducted concurrently (i.e., each gasoline sample is analyzed for all parameters covered by the survey program), this situation results in larger-than-necessary sample sizes in the summer for non-ozone precursor parameters. Outside the summer ozone season there is no need to maintain precision standards for each individual survey, but only for the annual series of such surveys. In the interest of efficiency, the survey manager may be expected to cut back on sample sizes during these times at the beginning and end of the calendar year. As a result, the simple average substantially over-represents summertime gasoline.

An additional reason for altering the prescribed approach to computing averages of series has to do with the weights attached to each sample to handle either lack of pre-survey information about an individual retail outlet's throughput or the situation where an outlet with unusually high throughput is located in a covered area with relatively few outlets and is consequently selected into the sample with certainty. For both situations the sample is not self-weighting and weights must be computed to properly represent the outlet's gallonage in the sample. The current approach, the simple average, requires that such weights be computed two different ways, once for the outlet's inclusion in the week-long survey for ozone-related parameters and then again for the annual average computation for non-ozone-related parameters. The latter set of weights cannot be computed until the year's data collection is complete, leaving some uncertainty up to the end of the year as to the status of survey results in areas where throughput data are not available for most outlets. This particular problem is a characteristic of the sample design approach currently being used by the industry survey organization, but that approach or some variant of it is likely to be used in any thorough attempt to meet the survey requirements in the regulations.

Both the distortion and the difficulty in computing weights, as discussed above, can be eliminated by changing the method by which the average of each survey series is computed for a given parameter in a given RFG covered area. Instead of averaging all of the measurements on individual gasoline samples in the survey series, we proposed the following: (1) That the measurements for each week-long survey in an area be averaged, regardless of the sample size, to create a set of means of week-long surveys, and then (2) that all of the resulting individual survey averages for the area be averaged, themselves, across all of the surveys in the series. This approach removes a significant source of distortion, simplifies calculations, and improves the representativeness of the number that we use to make the important decision on whether the gasoline in an area has passed or failed a survey series. We received no comments on these proposed modifications to § 80.68. Today's rule would finalize these modifications as proposed.

2. Clarification of Applicability of Survey Precision Requirements

The intent of the survey precision requirements in § 80.68(c)(13)(iii) is to ensure that errors (in either direction) in survey or survey series pass/fail determinations would be unlikely. Without these requirements survey managers would be able to trade off risk of inappropriate survey failure against survey costs, and the environment would not be protected against the increased risk of errors in the other direction resulting from insufficient sampling.

Therefore, the precision requirements should apply to the body of data that serves as the basis of each pass/fail determination. As currently written, the regulations attach the precision requirements exclusively to individual surveys without making it clear that for certain survey parameters the pass/fail determination is made against a year-long series of surveys rather than against a single survey. As a result, we proposed to clarify the regulations to attach the precision requirements to the appropriate body of data for each determination—to the individual survey where the parameters being evaluated are ozone-related and to the survey series for other parameters. We received no comments on the proposed changes to § 80.68(c)(13)(iii). Today's rule would finalize these changes as proposed.

D. Product Transfer Documentation (PTD)

1. Identification of the Gasoline

In the NPRM, we proposed to add a reference to RBOB in § 80.77(c) (requiring the volume of gasoline to be included on PTDs) to clarify that this PTD requirement applies to RBOB as well as to gasoline. We also proposed to delete the reference to conventional gasoline in § 80.77(f) (requiring title or custody PTDs to include identification of the gasoline as conventional or reformulated), since the requirements of § 80.77 do not apply to conventional gasoline (there are separate PTD requirements that apply to conventional gasoline in § 80.106), and we proposed to add a reference to RBOB in § 80.77(f) since the requirements of § 80.77 do apply to RBOB. In addition, we proposed to delete the reference to RBOB in § 80.77(g)(3), since this section requires parties to identify whether the product contains ethanol, and RBOB, by definition, does not contain oxygenate. We received no comments these changes and today's rule would finalize these changes as proposed. In addition, today's rule revises § 80.77(i) (listing the PTD requirements for RBOB) to remove the requirement in paragraph (i)(1) to identify RBOB as such on PTDs, since this requirement is now included in § 80.77(f), as indicated above.

[3] Section 80.68(c)(9)(i)(B) for toxics; (c)(10)(ii) for NO_X; (c)(11) for benzene; and (c)(12) for oxygen.

[4] In the case of toxics, the computation introduces weights for the season (high-ozone season or outside of high-ozone season) since the statistical model used to compute the emissions is different in the two seasons. The weights substantially correct the overemphasis on summer that affects other non-ozone-related parameters, as discussed in the remainder of the text.

[5] While the design for each of the individual week-long surveys is probabilistic, a variety of considerations prevent EPA from distributing the surveys in a perfectly random manner with respect to time. The overall sampling approach for survey series thus departs, to some extent, from a purely probabilistic design.

2. Elimination of PTD Requirements to Include Registration Numbers

Sections 80.77(j) and 80.106(a)(1)(vi) require, in the case of transferors and transferees who are refiners, importers or oxygenate blenders, that the EPA assigned registration number of those persons be included on the PTDs for RFG and conventional gasoline, respectively. We believe that this requirement may be overly burdensome, particularly downstream of the refiner, importer or oxygenate blender, since such information may not be readily available. We also believe that other information which could identify the refiner, importer or oxygenate blender is likely to be available. As a result, we believe that this requirement has limited value as a means of identifying and tracking the gasoline, and that we will be able to adequately enforce the regulations without this requirement. As a result, we proposed to eliminate the requirement to include registration numbers on PTDs. We previously issued guidance indicating that EPA will not require compliance with this requirement. See Reformulated Gasoline and Anti-dumping Questions and Answers (February 21, 1995).

We received favorable comments on the proposal to delete the requirement to include EPA registration numbers on PTDs. Today's rule would finalize this change. Based on the same rationale for eliminating this requirement discussed above, we are also eliminating this same requirement under § 80.81(g)(1)(vii) regarding California gasoline produced at a refinery located outside the State of California.

E. Exemption for Gasoline Used for Aviation and Racing Purposes

Section 211(k)(5) of the CAA prohibits the sale or dispensing by any person of conventional gasoline to ultimate consumers in any covered area. This statutory prohibition on the sale or dispensing of conventional gasoline in RFG covered areas is not restricted to gasoline used to fuel motor vehicles, but rather applies to all gasoline sold or dispensed within an RFG covered area to any consumer, regardless of the use. The prohibition, therefore, includes gasoline sold or dispensed for uses such as in motor vehicles, boats, construction equipment, recreational vehicles, and lawn and garden equipment.

We proposed that persons may be exempted from the prohibitions at § 80.78(a)(1) against distributing, transporting, storing, selling or dispensing aviation and racing gasoline if they clearly identify the gasoline as gasoline not for use in RFG areas. We proposed that the racing vehicle exemption would apply only in the case of vehicles that are used exclusively as racing vehicles in races that are sanctioned by generally recognized race sanctioning bodies.[6] In addition, the exception would apply only in the case of vehicles that do not meet the definition of ''motor vehicle'' under Clean Air Act § 216(2) and § 85.1703[7] and that are not registered or licensed for use on or operated on public roads or highways. The racing vehicle exemption applies to use of racing vehicles during practice and qualifying for, and competition in sanctioned races, and applies to motorcycles and boats used exclusively in sanctioned races.

The exemption for aviation gasoline used to fuel aircraft was proposed for safety considerations. Aviation gasoline must satisfy performance criteria that are relevant to the safe operation of aircraft, and this safety consideration outweighs the very limited potential for adverse environmental effects from conventional gasoline used in this manner. The exemption for racing gasoline is based on the special performance requirements for true race vehicles and the limited volumes of gasoline involved. We believe that the environmental impact from these exemptions is minimal, and the burden from refusing these exemptions is potentially significant. As a result, we believe the exemptions are warranted under these limited circumstances. See Alabama Power Company v. Costle, 636 F.2d 323, 357 (D.C. Cir. 1979). We have allowed these exemptions under guidance previously issued by the Agency. See Reformulated Gasoline and Anti-dumping Questions and Answers (January 17, 1995).

We received no comments on the proposal to exempt racing vehicle and aviation gasoline. These provisions are contained in § 80.78(a)(12). Today's rule would finalize these provisions.

F. References to Renewable Oxygenate Requirements

On August 2, 1994, we published regulations that would have required the use of ''renewable'' oxygenates to meet a portion of the oxygenate standard for RFG. See 59 FR 39290 (August 2, 1994). However, implementation of the renewable oxygenate requirements was stayed effective September 13, 1994, as a result of a legal challenge filed in the United States Court of Appeals for the DC Circuit. 59 FR 60715 (November 28, 1994). The Court of Appeals ultimately held that the renewable oxygenate requirements for RFG are invalid. See *American Petroleum Institute* v. *EPA*, 52 F.3rd 1113 (D.C. Cir. 1995).

In the NPRM, we proposed revisions to the RFG regulations to remove the language relating to the renewable fuels requirement. These revisions, and other references to renewable fuels, are shown in the following table. Today's rule would finalize these revisions.

§ 80.65(d)(2)(vi)(C) through (E)	Paragraphs are deleted because they apply only to renewable oxygenate requirements.
§ 80.81	References to renewable oxygenate requirements at § 80.83 are deleted in paragraphs (c)(2), (c)(5), (c)(6), and (c)(10).
§ 80.83	Current section is deleted because it applies only to renewable oxygenate requirements. A new section 80.83 is being added which provides procedures for handling gasoline treated as blendstock.
§ 80.128(e)(2)	Paragraph is revised to delete language that applies only to renewable oxygenate requirements.
§ 80.128(e)(6)	Paragraph is deleted because it applies only to renewable oxygenate requirements.
§ 80.129(a)	Paragraph is revised to delete language that applies only to renewable oxygenate requirements.
§ 80.129(d)(3)(iii)	Paragraph is deleted because it applies only to renewable oxygenate requirements.

[6] Examples of generally recognized race sanctioning bodies include the National Association for Stock Car Auto Racing, the Sports Car Club of America, the National Hot Rod Association, the American Motorcyclist Association, and the American Power Boat Association.

[7] Under § 85.1703 a vehicle is a ''motor vehicle'' if it is self propelled and capable of transporting a person or materials, unless the vehicle meets one or more of the following criteria: (1) A maximum speed of not more than 25 miles per hour; (2) the absence of features customary for street use, such as a reverse gear, a differential, and required safety features; or (3) the presence of features that render the vehicle highly unsuitable for street use, such as tracks.

G. Butane Blending

Under the RFG and conventional gasoline regulations, the addition of blendstock, including butane, to RFG or RBOB or conventional gasoline constitutes the production of gasoline. As a result, a butane blender is considered to be a refiner, subject to all standards and requirements that apply to refiners under the regulations. These requirements include meeting the standards applicable to RFG and conventional gasoline, sampling and testing each batch of gasoline produced, recordkeeping, and reporting.

Butane is a blendstock that historically has been blended with gasoline, particularly in the wintertime. Butane usually is not blended with gasoline that will be used during the summertime because the increased volatility of gasoline blended with butane could violate the federal or state volatility standards that apply during that period.

We believe that the requirement that refiners sample and test each batch of gasoline produced is a significant impediment to blending butane. This sampling and testing requirement interferes with butane blending because butane typically arrives at blend terminals and is blended in relatively small quantities. Under the current regulations, a butane blending operation may be required to sample at a frequency that could be restrictive for some parties. As a result, we proposed to allow butane to be blended with conventional gasoline under an alternative sampling and testing option in which compliance would be based on the butane specifications provided by the butane supplier, subject to certain conditions specified in the proposal.

1. Butane Blending With Conventional Gasoline

In the NPRM, we proposed that a butane blender who has documentation from the butane supplier indicating that the butane is of commercial grade (as defined in the regulations) may include the butane in anti-dumping compliance calculations based on the properties specified in the regulations for commercial grade butane. A butane blender that has documentation from the butane supplier indicating that the butane is of non-commercial grade (as defined in the regulations) may include the butane in compliance calculations based on the properties specified in the regulations for non-commercial grade butane, provided that the butane blender conducts a quality assurance program of sampling and testing to ensure that the butane has the properties specified in the regulations. A party that blends butane into gasoline under this alternative sampling and testing option would continue to be classified as a refiner and would be subject to all other refiner requirements.

When butane is blended into conventional gasoline outside the high ozone season, we believe there is little adverse environmental impact as a result of this sampling and testing option, as long as the butane is of sufficient purity. As a result, we proposed that this alternative sampling and testing option for butane blended with conventional gasoline apply during the period outside the high ozone control period (May 1 through September 15). We have allowed butane to be blended with conventional gasoline in a manner that is consistent with this approach in guidance included in Reformulated Gasoline and Anti-dumping Questions and Answers (October 3, 1994). Our experience has been that this approach facilitates butane blending, and that certification mechanisms are appropriate.

Although we proposed to allow use of this sampling and testing option for the entire period outside the high ozone control period, we requested comment on whether this sampling and testing option also should not apply during the ''shoulder periods'' immediately preceding and following the ozone control period. Most of the commenters recommended that the proposed flexibility not be disallowed during the shoulder periods. Some commenters indicated that the use of butane to allow optimum control of RVP levels in the shoulder periods would improve performance during these periods. One commenter believed there would be no adverse environmental effect from blending butane with conventional gasoline during the shoulder periods because blending low RVP gasoline with butane is limited by other gasoline specs (e.g., distillation), and because the shoulder periods have lower RVP gasoline from the high ozone period. One commenter, however, believed that butane blending could have a detrimental effect on the environment during the shoulder periods, since refiners start producing low vapor pressure gasoline well below the summer limit to change over the distribution system by the required dates, and adding butane to the low RVP gasoline in the spring would increase VOCs and slow the system changeover. In the fall, butane blending would effect a more instantaneous increase to the maximum RVP limit, increasing VOCs in this season.

The anti-dumping requirements for conventional gasoline were included in the RFG rule to ensure that overall emissions of exhaust toxics and NO_X will not increase over 1990 exhaust toxics and NO_X emissions. After consideration of all the comments received and upon further analysis by EPA, we believe that, although gasoline blended with butane during the shoulder periods may have a somewhat higher RVP than non-butane blended gasoline, blending butane into conventional gasoline is unlikely to degrade the overall conventional gasoline pool from 1990 gasoline to any significant degree, since butane blending is likely to reduce winter complex model exhaust toxics and NO_X emissions. See ''Butane Blending Technical Analysis,'' Memo to Docket. As a result, today's action would finalize the provisions for blending butane into conventional gasoline as proposed, and as currently allowed under the Question and Answer guidance, with no further limitations with regard to the time period in which the flexibility is allowed.[8]

One commenter indicated that, under certain circumstances, a refinery may wish to blend butane into conventional gasoline during the high ozone season, and that this practice should be allowed. The provisions for blending butane into conventional gasoline in today's rule do not prohibit a refiner from blending butane into conventional gasoline during the high ozone season. Butane blending into conventional gasoline may occur during the high ozone season, however, the butane blender must demonstrate, through sampling and testing, that the gasoline blended with the butane meets the volatility standards specified at § 80.27. This would necessitate sampling and testing each batch of the blended gasoline for RVP using the regulatory test method in § 80.46.

One commenter said the frequency of quality assurance sampling and testing for non-commercial grade butane should be one sample for every 500,000 gallons or every three months, whichever is more frequent, instead of one sample for every 50,000 gallons or every three months, as proposed. The commenter indicated this would be consistent with the existing Question and Answer guidance. The guidance requires the frequency of quality control sampling

[8] Note that today's rule regarding the sampling and testing requirements for butane blenders under the RFG and anti-dumping rule does not in any way alter or modify the sampling and testing requirements contained in 40 CFR 80.340 regarding butane blending into gasoline under the gasoline sulfur rule in Subpart H.

and testing to be one sample for every 65 truckloads or every 17 rail cars of butane, or every three months, whichever is more frequent. EPA estimates that the average truckload contains approximately 8,000 gallons of butane. Under the existing guidance, 65 truckloads would be approximately 500,000 gallons. Therefore, we agree with the commenter and believe that the proposed requirement to sample for every 50,000 gallons was in error. As a result, today's rule requires quality assurance sampling and testing for every 500,000 gallons of butane received, or every three months, whichever is more frequent.

One commenter opposed the additional flexibility for butane blending which allows compliance with the gasoline standards on the basis of the butane specifications provided by the butane supplier with no further obligation to sample and test the finished product. This commenter believes that, in the case of a violation downstream, it would not be known whether the batch was off-spec as received by the butane blender, or whether the butane blender added something other than butane which caused the violation. Although the commenter raises a valid concern, we believe that violations of this nature will be rare, and that the approach in today's action today is adequate to address such violations. First, the annual average exhaust toxics and NO_X emissions performance standards for conventional gasoline are met by the refiner. As discussed above, we believe that adding butane of the purity required by the regulations downstream from the refiner will not result in an increase of the exhaust toxics or NO_X emissions performance of the gasoline. Under the regulations, the butane blender must have documentation of the purity of the butane added, and conduct quality assurance sampling and testing when blending butane that is not of commercial grade. Second, the only downstream standard for conventional gasoline is the summertime RVP standard. Although butane blending may raise the RVP of the gasoline, under the regulations, a party that blends butane into conventional gasoline during the high ozone season is required to test for RVP to ensure compliance with the RVP standard. In addition, under the current regulations, parties upstream from the facility at which a violation is detected are presumed liable (as well as the facility where the violation was detected). To successfully defend against a presumption of liability, a party must demonstrate that the violation was not caused by him (or his employee or agent). Such demonstration must include a reasonably specific showing, by direct or circumstantial evidence, that the violation was caused or must have been caused by another party. See § 80.79(b). Therefore, for violations found downstream from the butane blender, the butane blender would likely be required to demonstrate that another party contaminated the gasoline after it left the butane blending facility.

One commenter recommended that the proposed properties for ''non-commercial'' grade butane be changed to reflect the conventional gasoline baseline values. As discussed above, the rule provides that a refiner that blends butane for which the refiner has documents from the butane supplier demonstrating that the butane has the properties for non-commercial grade butane may demonstrate compliance based on these properties provided that the refiner conducts a quality assurance sampling and testing program of the butane. We believe that butane must at least be of the quality reflected in the rule for non-commercial grade butane for EPA to be assured, in the absence of every-batch testing, that the butane blending will not result in any environmental degradation.

One commenter suggested that EPA consider not requiring butane blenders to run the Complex Model equations for each batch of butane blended. The provisions for butane blenders contain maximum values for olefins, aromatics, benzene and sulfur for commercial and non-commercial grade butane. In the NPRM, we proposed that butane blender-refiners use these values in compliance calculations. We believe, however, that the Complex Model normally will yield results that are in compliance using the maximum parameter values prescribed in the rule. As a result, today's rule requires batch reporting of the volume and properties of the butane, but does not require parties to calculate emissions using the Complex Model for each batch of butane blended with conventional gasoline. However, if a refiner wishes to include butane blended with conventional gasoline in the annual average compliance calculations for the refinery, the refiner must calculate the equivalent emissions performance of the butane using the provisions in § 80.101(g)(3). Given the difficulty associated with testing butane, and recognizing that the parameter values prescribed in the rule provide a worst case scenario, the rule also provides that the parameter values specified in the rule may be used in calculating the equivalent emissions performance under § 80.101(g)(3). A refiner who chooses to include the butane in annual average compliance calculations must include all butane blended during the annual averaging period in compliance calculations.

2. Butane Blending With RFG

In the proposal, we requested comment on whether EPA should allow this sampling and testing option for butane blended with RFG. Several commenters said that butane blending would improve the performance of RFG. One commenter recommended that the sampling and testing flexibility be extended to butane blending with RFG, but be limited to certain periods of the year and certain areas of the country.

At the time the provisions for butane blending were proposed, we were unable to establish with any reasonable degree of certainty whether adding butane to RFG would result in any increase in emissions of toxics or NO_X emissions. Because of the additional level of environmental concern associated with RFG, we believed that the flexibility to demonstrate compliance based on butane specifications provided by the butane supplier rather than on sampling and testing each butane blend should not be extended to RFG in the absence of data indicating that there would be no increase in these emissions. However, based on our recent analysis, we have concluded that, although the increase in RVP associated with butane blending may cause some increase in NO_X emissions, any negative effect on emissions is not likely to be significant enough to cause the gasoline to be in noncompliance with the wintertime RFG emissions standards. See ''Butane Blending Technical Analysis,'' Memo to Docket. As a result, today's action allows butane to be blended into RFG in the wintertime under the provisions in the rule. The sampling and testing provisions for blending butane into conventional gasoline and RFG are contained in new § 80.82.[9]

Today's rule does not allow use of this sampling and testing option for blending butane into RFG during the high ozone control period or during the shoulder periods immediately preceding and immediately following the high

[9] Section 80.82 is currently reserved under the heading ''Conventional gasoline marker.'' At the time the RFG final rule was promulgated, we elected not to include provisions for a conventional gasoline marker requirement, but reserved this section in order to include such provisions at a later date. See 59 FR at 7775 (February 16, 1994). Since we have no current plans to promulgate a requirement for a conventional gasoline marker, we are using this section to include the provisions relating to butane blending.

ozone control period. The increase in RVP associated with butane blending causes an increase of VOC emissions. As a result, blending butane into gasoline that is sold during the ozone control period or during some period prior to the beginning of the control period may cause the gasoline to be in noncompliance with the VOC minimum standard. As discussed above, the RVP increase associated with butane blending may also result in some increase in NO_X emissions. Both VOC and NO_X emissions contribute to higher ozone levels. When the RFG rule was promulgated, it was anticipated there would be ozone benefits during the shoulder periods, as well as during the ozone control period, as a result of the turnover to and from VOC controlled gasoline at the beginning and end of the ozone control period.[10] In many RFG areas, and particularly in areas with warmer climates, ozone may be of some concern during these shoulder periods. Blending butane into RFG could compromise the ozone benefits derived from having lower RVP gasoline in the distribution system before and after the ozone control period. As a result, today's rule provides that the sampling and testing option for parties who blend butane into RFG applies only to the period October 1 through March 31.

For the reasons discussed above regarding butane blended with conventional gasoline, today's rule does not require parties that blend butane with RFG or RBOB in accordance with the provisions of § 80.82 to calculate emissions using the Complex Model. However, refiners who wish to include gasoline batches produced by blending butane with RFG or RBOB in annual averaging compliance calculations will need to determine compliance with the RFG standards using the Complex Model. As discussed above, today's rule provides that the equivalent emissions performance of butane blended with conventional gasoline may be determined using the provisions in § 80.101(g)(3). The provisions in § 80.101(g)(3), however, apply specifically to blendstock blended with conventional gasoline, and are not applicable to blendstock blended with RFG or RBOB. As a result, today's rule provides that, where butane is blended with RFG or RBOB, and where the refiner wishes to include the butane in annual average compliance calculations, the relaxed sampling and testing approach under § 80.82 may not be used. The emissions performance of gasoline produced by blending butane with RFG or RBOB may be calculated in accordance with the provisions for using previously certified gasoline in § 80.65(i). Although this requires sampling and testing of the previously certified gasoline and the gasoline subsequent to blending the butane, we believe it is necessary to ensure that the integrity of the RFG program will not be compromised where butane is included in a refinery's annual average compliance calculations for RFG or RBOB. A refiner who chooses to include butane blended with RFG or RBOB in annual average compliance calculations must include all butane blended during the annual averaging period in compliance calculations.

Today's rule also adds specific recordkeeping and reporting provisions for refiners who blend butane with RFG or RBOB or conventional gasoline. These provisions represent modest changes to the recordkeeping and reporting requirements for butane blenders. They require retention of documents and reporting of information necessary to verify that the requirements of § 80.82 have been met.

H. Gasoline Treated as Blendstock (GTAB)

Today's rule includes provisions for treating imported gasoline as a blendstock under the RFG rule. These provisions allow an importer to conduct remedial blending of off-spec imported gasoline. Under the provisions of today's rule, the volume and properties of the imported product, called gasoline treated as blendstock, or GTAB, are not included in the party's importer compliance calculations, but instead are included in the party's refinery compliance calculations for the finished product.

Under the RFG and anti-dumping regulations, if imported gasoline is blended with additional blendstock, the blending constitutes a refinery operation for which all refiner RFG/anti-dumping requirements must be met, including compliance with refinery standards, batch sampling and testing, independent sampling and testing (for RFG), recordkeeping, reporting, and attest engagements. The RFG or anti-dumping standards for such an operation must be met solely on the basis of the blendstocks used, and the imported gasoline which was previously accounted for by the importer may not be included. This is true regardless of whether the blending-refining is conducted by the original importer of the gasoline or by another party. As a result, under the current regulations, it is difficult for importers to conduct remedial blending of imported gasoline that does not meet specifications (i.e, is ''off-spec'') prior to certification as RFG or conventional gasoline.

In the case of RFG, for example, the importer cannot import off-spec RFG and then add blendstocks to meet RFG specifications, and the gasoline cannot be imported as conventional and converted to RFG after remedial blending. The importer, therefore, must downgrade off-spec RFG to conventional gasoline, which can have significant financial consequences to the importer. A refiner who produces a batch of RFG or conventional gasoline that is off-spec prior to the gasoline leaving the refinery or being fungibly mixed at the refinery, on the other hand, can delay designating the gasoline as a batch of RFG, reblend the batch to correct the off-spec condition, and designate the reblended gasoline as a batch for refinery compliance calculations.

To correct this situation, we proposed provisions, which would be finalized by today's rule, that allow importers to conduct remedial blending of off-spec imported gasoline by treating the imported conventional gasoline or RFG as blendstock. This allowance is subject to certain requirements and limitations. For example, to prevent the marketing of gasoline that has not been certified, the proposal prohibits GTAB to be sold or transferred by the importer to another company prior to the completion of remedial blending. The company that imports the gasoline and classifies it as GTAB in its importer capacity also must conduct the remedial blending and report the blended gasoline in its refiner capacity. We believe that without this constraint gasoline could be lost in the fungible distribution system without ever having been certified.

In addition, for conventional gasoline standards, which are based on a company's individual baseline, we proposed to require the company each year to calculate an adjusted refinery compliance baseline for the refinery where the GTAB is used to produce gasoline. This adjusted compliance baseline is calculated separately each calendar year averaging period in which GTAB is used to produce gasoline, and consists of the volume-weighted combination of the company's importer baseline at the GTAB volume for the year, and the refinery's individual baseline at the refinery's gasoline volume exclusive of GTAB for the year. This requirement is intended to prevent a company with an individual refinery baseline that is less stringent than the company's importer baseline from using the GTAB option as a way to apply the less stringent refinery baseline to imported gasoline.

[10] See 56 FR 31282–3 (August 19, 1987).

EPA has allowed use of this GTAB option under guidance included in Reformulated Gasoline and Anti-Dumping Questions and Answers (February 6, 1995). We believe this guidance has been effective in providing importers with flexibility to correct off-spec imported gasoline, and that the conditions and limitations have been effective in preventing compliance difficulties.

We received several favorable comments on the proposal for GTAB. One commenter, however, recommended that EPA eliminate a proposed provision which would prohibit GTAB from being placed in a storage tank containing other gasoline unless the gasoline in the storage tank has the same designations under § 80.65(d) as the gasoline to be produced using the GTAB. The commenter believes that this prohibition was intended to prevent an importer from using conventional gasoline in the production of RFG and from reclassifying RFG with regard to VOC control in violation of § 80.78(a)(1). The commenter believes that this prohibition should be eliminated in light of the greater flexibility given to refiners for using previously certified gasoline (PCG).

The PCG provisions referred to in the comment were proposed finalized on December 28, 2001. 66 FR 67098. These provisions allow a refiner to use PCG in the production of a new batch of gasoline by entering the PCG batch in the refinery's compliance calculations as a negative batch in the category of its original designation. We do not believe that the GTAB provisions are in conflict with the provisions for using PCG. GTAB itself is not considered to be PCG, since it was not previously certified by the importer and included in the importer's compliance calculations. Instead, as discussed above, the GTAB is treated as a blendstock. In some cases, the PCG provisions may be used in the same blending operation that uses the GTAB approach. In such cases, the importer/refiner would determine the volume and properties of the GTAB and report the GTAB batch in its importer report to EPA, but would not include the volume and properties of the GTAB in its importer compliance calculations. The GTAB could then be put into a storage tank with PCG of a different designation, assuming the volume, properties and designation of the PCG were determined before the products were commingled. The importer/refiner could then blend the GTAB and PCG, with or without other blendstock, to produce a new batch. The PCG volume and properties would be entered as a negative batch in the refinery's compliance calculations in the category of the PCG batch's original designation. The entire batch would then be sampled and tested and included in the refinery's compliance calculations (using the appropriate GTAB equation). Today's action includes language to clarify that the PCG provisions and the GTAB provisions may be used in the same blending operation. However, where the PCG procedures are not used, GTAB may not be placed in a storage tank containing other gasoline unless the other gasoline has the same designations under § 80.65(d).

The commenter also recommended that § 80.83(e) be rewritten to clarify that the provisions for determining an adjusted baseline do not apply to GTAB used to produce RFG after January 1, 1998, since there are no RFG standards based on individual baselines after that date. We agree with the commenter and today's action changes the regulatory language to clarify that the provisions for determining an adjusted baseline do not apply to GTAB used to produce RFG after January 1, 1998.

One commenter recommended that EPA clarify whether importers are required to use their independent lab for GTAB imports, and whether the reports of GTAB should be sent on an annual basis.

We believe the regulations as proposed are clear with regard to both the independent lab requirement and the reporting requirements. Section 80.83(f)(1) requires independent lab sampling and testing for GTAB used to produce RFG. Section 80.83(f)(3) requires any GTAB that is used to produce RFG to be treated as imported RFG for purposes of sampling and testing, which would include the independent lab requirement.

In the NPRM, we proposed to add provisions to the recordkeeping and reporting requirements for RFG regarding GTAB. These provisions require refiners and importers to keep records that reflect the physical movement of the GTAB from the point of importation to the point of blending to produce RFG, and require GTAB to be identified as such on quarterly RFG reports. We also proposed similar recordkeeping requirements for GTAB under the anti-dumping regulations for conventional gasoline. We received no negative comments on these provisions and they are being finalized as proposed. The proposal, however, did not include a requirement that parties identify GTAB batches on their anti-dumping annual reports. Today's final action includes this requirement, which we believe is a logical outgrowth of the proposal.

One commenter pointed out that the GTAB provisions as proposed fail to define certain terms in the equations. Today's rule corrects this oversight by including definitions for all terms in the equations.

Today's rule also finalizes the definition of GTAB which was previously proposed. The definition is at § 80.2(f).

Finally, today's rule adds a new § 80.211 to allow the GTAB provisions to be used for purposes of compliance with the gasoline sulfur requirements in Subpart H. The rationale for allowing use of the GTAB provisions under the RFG/anti-dumping regulations also applies to use of the GTAB provisions under the gasoline sulfur regulations. We believe that application of the GTAB provisions to the gasoline sulfur regulations will provide consistency in the fuels regulations regarding the way off-spec imported gasoline may be treated. We believe that this provision is a logical outgrowth of the proposal for use of GTAB under the RFG/anti-dumping regulations.

V. Anti-Dumping Requirements

A. Imports of Gasoline by Truck

The requirements that apply to imported gasoline under §§ 80.65(b) and (c), and 80.101(d) and (i), apply to each batch of imported gasoline regardless of the mode of transportation. These requirements include batch sampling and testing, independent sampling and testing for RFG, recordkeeping, reporting and attest engagements. Therefore, an importer who imports gasoline into the United States by truck is required to meet these requirements, including sampling and testing for each batch of gasoline. For a truck importer, a batch could consist of the gasoline contained in the truck if homogeneous, or in each truck compartment if the truck's gasoline is not homogeneous.

We believe that the every-batch requirements may be difficult to meet when gasoline is imported by truck, because of the relatively small batch volumes involved. As a result, we proposed a limited alternative method by which importers could meet the requirements for conventional gasoline that is imported into the United States by truck. This approach is limited to imported conventional gasoline, and does not apply in the case of imported RFG because of the additional level of environmental concern associated with RFG.

The proposed approach was based on the importer meeting the conventional

gasoline standards on a per-gallon basis, rather than the current regulatory approach of meeting conventional gasoline standards on average. Per-gallon compliance was proposed so that the importer would not have to sample and test each truck load of imported gasoline, which we believed would be necessary for demonstrating compliance with a standard on average. Under the proposal, the importer instead would be allowed to rely on sampling and testing conducted by the operator of the truck loading terminal to verify that the gasoline meets all conventional gasoline standards that apply to the importer.

Because the terminal operator in most cases would not be subject to United States laws, the proposal contained safeguards intended to ensure that the gasoline in fact meets the applicable standards. Under the proposal, the importer would be required to conduct an independent program of quality assurance sampling and testing of the gasoline dispensed to the importer. This sampling and testing would be at a rate specified in the proposal, and the sampling would be unannounced to the terminal operator. In addition, EPA inspectors would be given access to conduct inspections at the truck loading terminal and at any laboratory where samples collected pursuant to this approach are analyzed.

We have allowed conventional gasoline to be imported by truck in a manner that is consistent with the approach proposed in the NPRM under guidance include in Reformulated Gasoline and Anti-dumping Questions and Answers, August 29, 1994. Our experience has been that this approach facilitates imports of conventional gasoline by truck, and that the sampling and testing requirements are appropriate enforcement safeguards. As a result, today's rule would finalize the provisions for imports of gasoline by truck as proposed, except for the addition of certain provisions as discussed below. The provisions are contained in § 80.101(i)(3).

Two issues regarding this sampling and testing approach for truck importers have arisen since the publication of the NPRM. The first issue involves whether truck importers would be able to meet the Complex Model exhaust toxics and NO_X emissions standards on a per-gallon basis. The Complex Model, which was required to be used for demonstrating compliance with the emissions standards beginning on January 1, 1998, calculates higher emissions for gasoline used in the winter due to the extra emissions that result from cold engine start-up, as compared to emissions calculated for gasoline used in the summer. The annual average exhaust toxics and NO_X standards were established by combining higher winter emissions with relatively lower summer emissions. Importers, therefore, are able to meet conventional gasoline standards on average by offsetting the higher emissions of winter gasoline with the lower emissions of summer gasoline. The issue for truck importers under the current guidance and NPRM, which require compliance on a per-gallon basis, is that gasoline produced during the winter may not meet the emissions standards on a per gallon basis. As a result, we modified the August 29, 1994 guidance, which allows truck importers to fulfill the sampling and testing requirements based on test results from the truck loading terminal, to also allow truck importers of conventional gasoline to comply with the conventional gasoline standards on an annual average basis. See Letter to Gregory M. Scott, Society of Independent Gasoline Marketers of America, from Steven A. Herman, dated January 2, 1998.

Our experience since 1998 has indicated that, under this approach, the quality of gasoline imported by truck meets the anti-dumping standards without environmental detriment, and that this approach is necessary for truck importers to comply with the Complex Model standards. As a result, today's action includes a provision in § 80.101(i)(3) which allows truck importers of conventional gasoline who use the modified sampling and testing approach to comply with the conventional gasoline standards on an annual average basis.

The second issue involves the requirement that truck importers who rely on test results from the foreign terminal must conduct quality assurance sampling and testing to verify the terminal's testing. Under the guidance and NPRM, the quality assurance testing may be conducted by either the importer or an independent laboratory. In some instances, however, every-batch sampling and testing is conducted at the terminal by an independent laboratory. In these situations, i.e., where an independent laboratory samples and tests each batch of gasoline at the truck-loading terminal supplying the importer's trucks, we believe that additional quality assurance sampling and testing by the importer or independent laboratory is redundant. As a result, we believe that a truck importer may satisfy the sampling and testing requirements, including the quality assurance requirement, using results from sampling and testing conducted by an independent laboratory at the truck-loading terminal, provided that the sampling and testing is conducted subsequent to each receipt of gasoline into the storage tank supplying the importer's truck, or immediately prior to each transfer of gasoline into the importer's truck. See Letter to Kevin J. Kyle, Pal Energy Corporation, from Charles N. Freed, dated April 23, 1998. Today's rule includes provisions in § 80.101(i)(3) to clarify this approach.

We received comments on the original proposal for truck importers from three parties. One commenter said that the quality assurance requirement is particularly difficult for small importer companies and that such companies should be exempt from the quality assurance sampling and testing so long as independent laboratory tests are being performed by other larger import companies and the gasoline is pulled from the same terminal and the same tankage. While we do not believe that an exemption from the quality assurance sampling and testing is warranted, we believe that the provisions in today's rule do not prohibit a smaller truck importer from entering into an arrangement with a larger importer to use tests results obtained from an independent laboratory that conducts sampling and testing on the same terminal tankage for the larger importer.

Two commenters recommended that EPA expand the provisions for truck importers to include rail tank cars. We proposed these provisions specifically for truck importers based on information we had received regarding the particular difficulties that truck importers have conducting every batch sampling and testing due to the small batch sizes transported in tank truck compartments. We believe that every batch sampling and testing does not impose similar burdens on importers who import gasoline by rail tank cars and the NPRM did not seek notice and comment on these provisions being applied to such importers. As a result, today's rule does not extend the provisions for tank truck importers to importers who import gasoline by rail.

B. Date for Submission of Attest Engagement Reports

Section 80.105(c) requires that attest engagement reports involving conventional gasoline must be submitted by May 30 each year. However, § 80.75(m) requires that attest engagement reports for RFG must be submitted by May 31 each year. This inconsistency in reporting deadlines was inadvertent when these sections were promulgated, and, as a result, we proposed to conform the dates by adopting May 31 as the deadline for

submitting conventional gasoline attest reports. We received no comments on this change and today's action would finalize it as proposed.

VI. Attest Engagements

Under §§ 80.65(h), 80.75(m), and 80.105(c) refiners and importers, and reformulated gasoline oxygenate blenders who achieve compliance on average, are required to commission an audit each year to review compliance with certain requirements of the reformulated gasoline and anti-dumping regulations. The audit requirements are specified in 40 CFR Part 80, Subpart F. Under these regulations, the auditor evaluates compliance with the specified requirements by completing audit procedures, called ''agreed upon procedures,'' that are included in the regulations for each requirement; i.e., the auditor ''attests'' to the results of the agreed upon procedures. As a result, the overall audit is called an ''attest engagement.''

In the NPRM, we proposed a number of changes to the attest engagement requirements. Certain of these proposed changes are included in today's rule and are discussed below.

A. Modification to Agree-Upon Procedures in §§ 80.128 and 80.129, and Promulgation of Agreed-Upon Procedures in §§ 80.133 and 80.134

First, today's rule amends the attest provisions in Subpart F to include new attest procedures. The agreed upon procedures for refiners and importers currently are specified in § 80.128, and for oxygenate blenders in § 80.129. Since promulgation of these procedures, we received comments from industry, and from auditors who conducted attest engagements under this program, that the agreed upon procedures in §§ 80.128 and 80.129 should be modified in order to be more efficient. A group of auditors working in this area convened under the auspices of the American Institute of Certified Public Accountants (AICPA) to develop new attest procedures. This group submitted modified attest procedures to EPA in January 1996, and asked EPA to approve these procedures for use. On March 15, 1996, by letter to Ian A. MacKay, AICPA, EPA approved use of the attest procedures AICPA submitted, with certain modifications, under the authority of § 80.128. In the NPRM, EPA proposed to amend the attest provisions in Subpart F to include these modified attest procedures. Today's rule would finalize these procedures. The modified attest procedures for refiners and importers are contained in § 80.133. The modified attest procedures for oxygenate blenders are contained in § 80.134.

The modified attest procedures do not differ significantly in substance from the procedures in §§ 80.128 and 80.129. The principal difference between the modified attest procedures and the procedures in §§ 80.128 and 80.129 is that the modified procedures include criteria for identifying when certain attest procedures, or categories of attest procedures, are unnecessary for a particular attest engagement. These modified attest procedures have been used successfully by numerous auditors for attest engagements since the 1995 reporting period.

The modified attest procedures submitted by AICPA included certain terms not included in the original procedures. Today's rule finalizes definitions for certain of these terms which were previously proposed. These definitions do not change the substance of the original procedures.

We received several comments on the modified attest provisions. One commenter said that § 80.133 lumps importers with refiners even though the items noted in the proposed language do not always apply to importers. The commenter recommends that importer procedures be separately defined and should consider the logistical aspects of terminal operation. Another commenter indicated that the attest provisions are inappropriate in situations where an importer brings GTAB into a terminal used by other refiner/importers.

We understand that importers, including importer-refiners who blend GTAB, may use different tanks at different times, and as a result, inventory reconciliation cannot always be done in the same way it is done by crude oil refiners with fixed tanks. Therefore, we believe that the inventory reconciliation for importers, including GTAB importer-refiners, can be done with other data, such as Customs records and other commercial documents, if full inventory reconciliation is not available due to non-continuous use of tanks.

One commenter said that the results in § 80.133(h)(3) will not agree due to test variances and oxygenate purity. The commenter recommended that EPA allow the acceptable ranges at § 80.65(e) for this procedure and also to fulfill the requirements at § 80.133(h)(4)(ii)(B). We agree with the comment and have added a provision to allow the acceptable ranges set forth in the chart at § 80.65(e).

In addition, the commenter recommended that EPA provide an acceptable range for total weight percent oxygen to fulfill the requirements under § 80.133(h)(4)(i), since an oxygenate weight percent of exactly 2.0 would not be likely due to the variables associated with the laboratory testing, ethanol purity and specific gravities. This provision, however, requires the attest auditor to compare only records relating to RBOB for which the refiner designated a specific type and amount of oxygenate to be blended by the oxygenate blender. The auditor must agree the refiner's oversight test results of the type of oxygenate used and the oxygenate content to the instructions for type and amount of oxygenate designated on the product transfer documents for the RBOB. The results must be within the acceptable range for the oxygenate given in § 80.65(e)(2)(i). This provision does not require the auditor to compare results of oxygenate weight percent testing. A range for total weight percent oxygen, therefore, is unnecessary and irrelevant to the attest requirements under § 80.133(h)(4)(i). Today's rule modifies the proposed regulatory language to clarify this requirement.

We also proposed that the original attest procedures in §§ 80.128 and 80.129 would continue to be available as alternatives to the proposed attest procedures prior to the 1998 reporting period, and that the attest procedures in §§ 80.133 and 80.134 would be required for subsequent reporting periods. We proposed to phase out the original attest procedures because we believed the modified attest procedures are superior and ultimately should be used for all attest engagements. In addition, we believed that oversight of the attest requirement, including reviews of attest reports, would be more efficient if all attest engagements were based on the same agreed upon procedures. We proposed that during the period when both the original and the modified attest procedures are available, parties would be required to use either the original attest procedures for refiners and importers under § 80.128 in its entirety, or the modified attest procedures for refiners and importers under § 80.133 in its entirety. A party would not be allowed to use a mixture of attest procedures from § 80.128 and § 80.133. Similarly, an oxygenate blender would be required to use the attest procedures in § 80.129 or in § 80.134, and could not mix attest procedures from both sections. The reason for this constraint is that the different attest procedure sections contain different requirements that are organized differently, and, at least in part, the logic of the sections would be lost if these sections are not completed in their entirety.

We received no negative comments on the proposal to phase out the old attest

procedures. We continue to believe it is appropriate to phase out the original procedures. As a result, today's rule allows use of the attest procedures at §§ 80.128 and 80.129 as alternatives to the procedures at §§ 80.133 and 80.134 through the attest for the 2005 reporting period. Beginning with the attest engagements for the 2006 reporting period, only the attest procedures at §§ 80.133 and 80.134 may be used.

Section 80.125 contains the general requirement for attest audits. Today's rule would finalize proposed modifications to § 80.125, to require use of the new attest procedures in §§ 80.133 and 80.134, and allow the use of §§ 80.128 and 80.129 as alternatives until 2006.

B. Attest Procedures for GTAB, Previously Certified Gasoline (PCG), Truck Importers and Butane Blenders

As discussed above, today's rule finalizes procedures by which importers may treat imported gasoline as blendstock (GTAB)(§ 80.83), modified sampling and testing procedures for importers who import conventional gasoline by truck (§ 80.101(i)(3)), and procedures for butane blenders (§ 80.101(i)(4)). As a result, we are also finalizing the proposed attest procedures that would apply in the case of parties who utilize these options. These attest procedures follow the general model of the attest procedures included in §§ 80.128, 80.129, 80.133 and 80.134.[11]

One commenter said that inventory accounting records usually distinguish only between conventional gasoline and RFG, and do not distinguish between imports and domestic receipts or GTAB, unfinished gasoline, etc. As a result, these records cannot be used as an independent verification of the total import volume, total GTAB, etc. The commenter recommended that EPA allow the use of other documents to reconcile under § 80.133(a)(1). This commenter also recommended that EPA add ''or tank containing blendstock'' to § 80.131(a)(3)(iii), since the refiner/importer may discharge GTAB to a blending tank containing blendstocks. We agree with the comments and have modified § 80.131(a)(1) of the GTAB attest section to allow the use of alternative documents to agree the volumes if the yield accounting documents are not sufficient. We have also modified § 80.131(a)(3)(iii) to include the phrase ''or tank containing blendstock.'' In addition, today's rule adds a provision to the attest requirements for PCG which parallels § 80.131(a)(1), including the change discussed above. This provision, which was proposed and received no negative comments, was inadvertently omitted from attest requirements in the final PCG rule.

Today's rule also would finalize a proposed provision in § 80.125 which reflects the requirement for GTAB attest engagements, with a modification which adds the requirement for attest engagements for truck importers, PCG and butane blenders.

VII. Public Participation

We solicited comments on the need to take the actions proposed in the July 11, 1997 NPRM, including the actions in today's direct final rule. We reviewed and considered all written comments on these changes to the RFG and conventional gasoline regulations. All comments received by EPA are located in the EPA Air Docket, Docket A–97–03 (See **ADDRESSES**).

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in this direct final rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 et seq. The information collection requirements are not enforceable until OMB approves them.

This direct final rule makes certain revisions to the RFG and conventional gasoline regulations which provide regulated parties with additional flexibility to comply with the regulations. Some of the revisions in today's action lessen the information collection burdens on certain regulated parties; for example, the rule reduces the sampling and testing requirements for importers who import gasoline by truck. Most of the revisions in today's action will not result in any additional reporting or recordkeeping burdens. Some of the provisions that provide additional flexibility for regulated parties necessitate modest recordkeeping and reporting requirements.

The estimated total annual hour burden on industry for this rulemaking is approximately 1398 hours. This estimate is based on an average of 1 hour per respondent × 40 respondents for GTAB recordkeeping and reporting, 33.40 hours per respondent × 40 respondents for GTAB sampling and testing, and 1.08 hours per respondent × 20 respondents for butane blending recordkeeping and reporting. The estimated total annual cost burden on industry for this rulemaking is $83,860. This estimate is based on an annual cost of $60 per respondent × 40 respondents for GTAB recordkeeping and reporting, $2,004 per respondent × 40 respondents for GTAB sampling and testing, and $65 per respondent × 20 respondents for butane blending recordkeeping and reporting.

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

[11] On December 28, 2001, we finalized procedures for using previously certified gasoline (PCG), and related attest procedures for PCG. 66 FR 67098. These attest procedures currently are contained in § 80.131. Today's rule renumbers these PCG attest procedures in § 80.131 and adds the attest provisions for GTAB, truck importers and butane blenders. The substance of the attest provisions for PCG is unchanged.

information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this direct final rule.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule involves technical corrections, clarifications and codification of certain Agency guidance intended to promote successful implementation of the requirements for reformulated and conventional gasoline and does not include additional regulatory requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's direct final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The direct final rule imposes no enforceable duty on any State, local or tribal governments or the private sector. This rule applies only to gasoline refiners, importers, blenders and marketers.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule would finalize certain technical and minor changes to the RFG rule, clarify provisions, and codify certain guidance previously issued by the Agency. Thus, Executive Order 13132 does not apply to this direct final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This direct final rule does not have tribal implications as specified in Executive Order 13175. This rule applies to gasoline refiners, importers, blenders and marketers. Today's rule modifies the Federal RFG and conventional gasoline requirements, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This direct final rule is not subject to Executive Order 13045 because it does not establish an environmental standard

intended to mitigate health or safety risks.

H. Executive Order 13211: Acts That Significantly Affect Energy Supply, Distribution, or Use

This direct final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve any new technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

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

IX. Statutory Provisions and Legal Authority

Statutory authority for today's direct final rule comes from sections 211(c) and 211(k) of the CAA (42.U.S.C. 7545(c) and (k)). Section 211(c) allows EPA to regulate fuels that contribute to air pollution which endangers public health or welfare, or which impairs emission control equipment. Section 211(k) prescribes requirements for RFG and conventional gasoline and requires EPA to promulgate regulations establishing these requirements. Additional support for the procedural aspects of the fuels controls in today's rule comes from sections 114(a) and 301(a) of the CAA. Today's action is a rulemaking subject to the requirements of CAA section 307(d).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Imports, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: December 2, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545, and 7601(a).

Subpart A—[Amended]

■ 2. Section 80.2 is amended by revising footnote 1 in paragraph (c), and paragraph (ee); and by adding paragraph (ww), to read as follows:

§ 80.2 Definitions.

* * * * *

(c) * * * [1]

* * * * *

(ee) *Reformulated gasoline* means any gasoline whose formulation has been certified under § 80.40, and which meets each of the standards and requirements prescribed under § 80.41.

* * * * *

(ww) *Gasoline Treated as Blendstock, or GTAB,* means imported gasoline that is excluded from the import facility's compliance calculations, but is treated as blendstock in a related refinery that includes the GTAB in its refinery compliance calculations.

* * * * *

[1] *State* means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands.

Subpart D—[Amended]

■ 3. Section 80.41 is amended by revising paragraph (p) to read as follows:

§ 80.41 Standards and requirements for compliance.

* * * * *

(p) *Effective date for changed minimum or maximum standards.* In the case of any minimum or maximum standard that is changed to be more stringent by operation of paragraphs (k), (m), (n), or (o) of this section, the effective date for such change shall be the following number of days after the date EPA announces the change:

(1) 90 days for refinery or import facilities;

(2) 180 days for retail outlets and wholesale purchaser-consumer facilities; and

(3) 150 days for all other facilities.

* * * * *

■ 4. Section 80.45 is amended by revising paragraphs (c)(1)(iv)(C)(*6*), (c)(1)(iv)(D)(*6*) and (d)(1)(iv)(B) to read as follows:

§ 80.45 Complex emissions model.

* * * * *

(c) * * *

(1) * * *

(iv) * * *

(C) * * *

(*6*) If [80.32 + (0.390 × ARO)] exceeds 94 for the target fuel, and the target fuel value for E300 exceeds 94, then the E300 value for the ''edge target'' fuel shall be set equal to 94 volume percent.

* * * * *

(D) * * *

(*6*) If [79.75 + (0.385 × ARO)] exceeds 94 for the target fuel, and the target fuel value for E300 exceeds 94, then the E300 value for the ''edge target'' fuel shall be set equal to 94 volume percent.

* * * * *

(d) * * *

(1) * * *

(iv) * * *

(B) For fuels with SUL, OLE, and/or ARO levels outside the ranges defined in Table 7 of paragraph (d)(1)(iv)(A) of this section, $Y_{NOx}(t)$ shall be defined as:

(*1*) For Phase I:

$$Y_{NOx}(t) = 100\% \times 0.82 \times [\exp(n_1(et))/\exp(n_1(b)) - 1] + 100\% \times 0.18 \times [\exp(n_2(et))/\exp(n_2(b)) - 1] + \{100\% \times 0.82 \times [\exp(n_1(et))/\exp(n_1(b))] \times [\{[(-0.00000133 \times SUL_{et}) + 0.000692] \times \Delta SUL\} + \{[(-0.000238 \times ARO_{et}) + 0.0083632] \times \Delta ARO\} + \{[(0.000733 \times OLE_{et}) - 0.002774] \times \Delta OLE\}]\}$$

$+ \{100\% \times 0.18 \times [\exp(n_2(et))/\exp(n_2(b))] \times [\{0.000252 \times \Delta SUL\} +$
$+ \{[(-0.0001599 \times ARO_{et}) + 0.007097] \times \Delta ARO\}$
$+ \{[(0.000732 \times OLE_{et}) - 0.00276] \times \Delta OLE\}]\}$

(*2*) For Phase II:

$Y_{NOx}(t) = 100\% \times 0.738 \times [\exp(n_1(et))/\exp(n_1(b)) - 1]$
$+ 100\% \times 0.262 \times [\exp(n_2(et)/\exp(n_2(b)) - 1]$
$+ [100\% \times 0.738 \times [\exp(n_1(et))/\exp(n_1(b))] \times [\{[(-0.00000133 \times SUL_{et}) + 0.000692] \times \Delta SUL\}$
$+ \{[(-0.000238 \times ARO_{et}) + 0.0083632] \times \Delta ARO\}$
$+ \{[(0.000733 \times OLE_{et}) - 0.002774] \times \Delta OLE\}]\}$
$+ \{100\% \times 0.262 \times [\exp(n_2(et))/\exp(n_2(b))] \times [\{0.000252 \times \Delta SUL\} +$
$\times [\{(-0.0001599 \times ARO_{et}) + 0.007097] \times \Delta ARO\}$
$+ \{[(0.000732 \times OLE_{et}) - 0.00276] \times \Delta OLE\}]\}$

Where:

n_1, n_2 = The equations defined in paragraphs (d)(1) (i) and (ii) of this section.

et = Collection of fuel parameters for the ''edge target'' fuel. These parameters are defined in paragraphs (d)(1)(iv) (C) and (D) of this section.

$n_1(et)$ = The function n_1 evaluated with ''edge target'' fuel parameters, which are defined in paragraph (d)(1)(iv)(C) of this section.

$n_2(et)$ = The function n_2 evaluated with ''edge target'' fuel parameters, which are defined in paragraph (d)(1)(iv)(C) of this section.

$n_1(b)$ = The function n_1 evaluated with the appropriate baseline fuel parameters defined in paragraph (b)(2) of this section.

$n_2(b)$ = The function n_2 evaluated with the appropriate baseline fuel parameters defined in paragraph (b)(2) of this section.

SUL_{et} = The value of SUL for the ''edge target'' fuel, as defined in paragraph (d)(1)(iv)(C) of this section.

ARO_{et} = The value of ARO for the ''edge target'' fuel, as defined in paragraph (d)(1)(iv)(C) of this section.

OLE_{et} = The value of OLE for the ''edge target'' fuel, as defined in paragraph (d)(1)(iv)(C) of this section.

* * * * *

■ 5. Section 80.49 is amended by revising the paragraph (a) introductory text, the entry for ''New Parameter'' in the table in paragraph (a)(1), paragraph (a)(3) introductory text, and the paragraph (b) introductory text to read as follows:

§ 80.49 Fuels to be used in augmenting the complex emission model through vehicle testing.

(a) Seven fuels (hereinafter called the ''addition fuels'') shall be tested for the purpose of augmenting the complex emission model with a parameter not currently included in the complex emission model. The properties of the addition fuels are specified in paragraphs (a)(1) and (2) of this section. The addition fuels shall be specified with at least the same level of detail and precision as in paragraph (a)(5)(i) of this section, and this information must be included in the petition submitted to the Administrator requesting augmentation of the complex emission model.

(1) * * *

PROPERTIES OF FUELS TO BE TESTED WHEN AUGMENTING THE MODEL WITH A NEW FUEL PARAMETER

Fuel property	Fuels						
	1	2	3	4	5	6	7
* * *	*		*		*		*
New Parameter [1]	C	(C+B)/2	B	C	B	C	B

[1] C = Candidate level, B = Baseline level.

* * * * *

(3) The addition fuels shall be specified with at least the same level of detail and precision as in paragraph (a)(5)(i) of this section, and this information shall be included in the petition submitted to the Administrator requesting augmentation of the complex emission model.

* * * * *

(b) Three fuels (hereinafter called ''extention fuels'') shall be tested for purpose of extending the valid range of the complex emission model for a parameter currently included in the complex emission model. The properties of the extension fuels are specified in paragraphs (b)(2) through (4) of this section. The extension fuels shall be specified with at least the same level of detail and precision as in paragraph (a)(5)(i) of this section, and this information must be included in the petition submitted to the Administrator requesting augmentation of the complex emission model. Each set of three extension fuels shall be used only to extend the range of a single complex model parameter.

* * * * *

■ 6. Section 80.50 is amended by revising paragraph (a)(2) to read as follows:

§ 80.50 General test procedure requirements for augmentation of the emission models.

(a) * * *

(2) Toxics emissions must be measured when testing the extension fuels per the requirements of § 80.49(b) or when testing addition fuels 1, 2, or 3 per the requirements of § 80.49(a).

* * * * *

■ 7. Section 80.65 is amended by:

■ a. Removing and reserving paragraph (d)(2)(iii), and removing paragraphs (d)(2)(vi)(C), (D) and (E);

■ b. Revising the heading in paragraph (e), paragraph (e)(1), and the first sentence of paragraph (e)(2)(ii)(B);

■ e. Removing and reserving paragraph (g), to read as follows:

§ 80.65 General requirements for refiners, importers, and oxygenate blenders.

* * * * *

(e) *Determination of volume and properties.* (1) Each refiner or importer shall for each batch of reformulated gasoline or RBOB produced or imported determine the volume and the value of each of the properties specified in paragraph (e)(2)(i) of this section, except that the value for RVP must be determined only in the case of reformulated gasoline or RBOB that is VOC-controlled. These determinations shall:

(i) Be based on a representative sample of the reformulated gasoline or RBOB that is analyzed using the methodologies specified in § 80.46;

(ii) In the case of RBOB, follow the oxygenate blending instructions specified in § 80.69(a);

(iii) Be carried out either by the refiner or importer, or by an independent laboratory; and

(iv) Be completed prior to the gasoline or RBOB leaving the refinery or import facility for each parameter that the gasoline or RBOB is subject to, or that is used to calculate an emissions performance that the gasoline or RBOB is subject to, under § 80.41(a) through (f).

(2) * * *

(ii) * * *

(B) The refiner or importer shall have the gasoline analyzed for the property at one additional independent laboratory.

* * *

* * * * *

■ 8. Section 80.67 is amended by revising paragraph (h)(1)(iv) to read as follows:

§ 80.67 Compliance on average.

* * * * *

(h) * * *

(1) * * *

(iv) The credits are transferred, either through inter-company or intra-company transfers, directly from the refiner, importer, or oxygenate blender that creates the credits to the refiner, importer, or oxygenate blender that uses the credits to achieve compliance;

* * * * *

■ 9. Section 80.68 is amended by:

■ a. Revising the first sentence of paragraph (b)(2)(ii);

■ b. Revising paragraphs (c)(9)(i)(B), (c)(9)(ii)(B), and (c)(10)(ii);

■ c. Adding a new footnote 2;

■ d. Adding paragraphs (c)(10)(iii), (iv) and (v); and

■ e. Revising paragraphs (c)(11), (c)(12), and (c)(13)(iii) to read as follows:

§ 80.68 Compliance surveys.

* * * * *

(b) * * *

(2) * * *

(ii) In the event that any covered area(s) fails a survey or survey series according to the criteria set forth in paragraph (c) of this section, the annual decreases in the numbers of surveys prescribed by paragraph (b)(1) of this section, as adjusted by paragraph (b)(2)(i) of this section, shall be adjusted as follows in the year following the year of the failure.* * *

* * * * *

(c) * * *

(9)(i) * * *

(B) The annual average of the toxics emissions reduction percentages for all samples from a survey series shall be calculated according to the following formula [2]:

$$AATER = \left(\left(\frac{\sum_{i=1}^{s_1} \left(\frac{\sum_{j=1}^{n_1} TER_{1,j}}{n_1} \right)_i}{s_1} \right) \times 0.468 \right) + \left(\left(\frac{\sum_{i=1}^{s_2} \left(\frac{\sum_{j=1}^{n_2} TER_{2,j}}{n_2} \right)_i}{s_2} \right) \times 0.532 \right)$$

Where:

AATER = the annual average toxics emissions reduction

$TER_{1,j}$ = the toxics emissions reduction for sample j of gasoline collected during the high ozone season

$TER_{2,j}$ = the toxics emissions reduction for sample j of gasoline collected outside the high ozone season

n_1 = the number of gasoline samples collected during a one-week survey conducted within the high ozone season

s_1 = the number of one-week surveys conducted within the high ozone season

n_2 = the number of gasoline samples collected during a one-week survey conducted outside the high ozone season

s_2 = the number of one-week surveys conducted outside of the high ozone season

* * * * *

(ii) * * *

(B) The annual average of the toxics emissions reduction percentages for a survey series shall be calculated according to the formula specified in paragraph (c)(9)(i)(B) of this section; and

* * * * *

(10) * * *

(ii) The average NO_X emission reduction percentage for each single week-long NO_X survey shall be calculated as the average of all NO_X emission reduction percentages from the survey.

(iii) The covered area shall have failed a NO_X survey if the average NO_X emissions reduction percentage for all survey samples is less than the applicable Phase I or Phase II complex model per-gallon standard for NO_X emissions reduction.

(iv) The average NO_X emission reduction percentage for a NO_X survey series shall be calculated according to the following formula:

$$ANER = \frac{\sum_{i=1}^{S} \left(\frac{\sum_{j=1}^{n} NER_j}{n} \right)_i}{S}$$

Where:

ANER = the average NO_X emission reduction percentage for a NO_X survey series,

n = the number of gasoline samples taken in the course of a week-long NO_X survey,

NER_j = the NO_X emissions reduction percentage for gasoline sample j determined according to the appropriate methodology at § 80.45, and

S = the number of week-long NO_X surveys conducted during the NO_X survey series period

(v) The covered area shall have failed a NO_X survey series if the average NO_X emissions reduction percentage for the

[2] The formula requires, first, that the toxic reductions of samples taken in each one-week survey be averaged to obtain an average for each such survey. Then these survey averages are, themselves, averaged separately for high-ozone and non-high-ozone season surveys, to obtain two overall averages. These overall averages are each to be multiplied by a seasonal weight (0.468 for high-ozone season and 0.532 for non-high ozone season) and the resulting products added together to obtain the average annual toxic emission reduction.

series, as computed in paragraph (c)(10)(iv) of this section, is less than the applicable Phase I or Phase II complex model per gallon standard for NO_X emissions reduction.

(11)(i) The results of each benzene content survey series conducted in any covered area shall be determined according to the following formula:

$$AABC = \frac{\sum_{i=1}^{S}\left(\frac{\sum_{j=1}^{n} BC_j}{n}\right)_i}{S}$$

Where:

AABC = the annual average benzene content for a benzene content survey series,

n = the number of gasoline samples taken in the course of a week-long benzene content survey,

BC_j = the benzene content for gasoline sample j taken in the course of a week-long benzene content survey, and

S = the number of week-long benzene content surveys conducted during the year.

(ii) If the annual average benzene content computed in paragraph (c)(11)(i) of this section is greater than 1.000 percent by volume, the covered area shall have failed a benzene content survey series.

(12)(i) The results of each oxygen content survey series conducted in any covered area shall be determined according to the following formula:

$$AAOC = \frac{\sum_{i=1}^{S}\left(\frac{\sum_{j=1}^{n} OC_j}{n}\right)_i}{S}$$

Where:

AAOC = the annual average oxygen content for an oxygen content survey series,

n = the number of gasoline samples taken in the course of a week-long oxygen content survey,

Oc_j = the oxygen content for gasoline sample j taken in the course of a week-long oxygen content survey, and

S = the number of week-long oxygen content surveys conducted during the year.

(ii) If the annual average oxygen content computed in paragraph (c)(12)(i) of this section is less than 2.00 percent by weight, the covered area shall have failed an oxygen content survey series.

(13) * * *

(iii) Include procedures such that the number of samples included in each survey or survey series (whichever is applicable) assures that:

(A) In the case of simple model surveys or survey series, the average levels of oxygen, benzene, RVP, and aromatic hydrocarbons are determined with a 95% confidence level, with error of less than 0.1 psi for RVP, 0.05% for benzene (by volume), and 0.1% for oxygen (by weight); and

(B) In the case of complex model surveys or survey series, the average levels of oxygen, benzene, RVP, aromatic hydrocarbons, olefins, T–50, T–90 and sulfur are determined with a 95% confidence level, with error of less than 0.1 psi for RVP, 0.05% for benzene (by volume), 0.1% for oxygen (by weight), 0.5% for olefins (by volume), 5 °F. for T–50 and T–90, and 10 ppm for sulfur; or an equivalent level of precision for the complex model-determined emissions parameters; and

* * * * *

■ 10. Section 80.69 is amended by removing and reserving paragraph (a)(4), and revising paragraph (e)(2)(i)(A) and the (e)(2)(v) introductory text to read as follows:

§ 80.69 Requirements for downstream oxygenate blending.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(A) Prior to combining the resulting gasoline with any other gasoline; or

* * * * *

(v) In the event the testing results for any sample indicate the gasoline does not contain the specified type and amount of oxygenate (within the ranges specified in § 80.65(e)(2)(i)):

* * * * *

■ 11. Section 80.74 is amended by:

■ a. Removing and reserving paragraph (b)(2); revising paragraph (b)(7)(ii); and adding paragraphs (b)(8) and (b)(9); and

■ b. Removing and reserving paragraph (f), to read as follows:

§ 80.74 Recordkeeping requirements.

* * * * *

(b) * * *

(7) * * *

(ii) Records that reflect the storage and movement of the previously certified gasoline within the refinery to the point the previously certified gasoline is used to produce reformulated gasoline or RBOB;

(8) In the case of butane blended into reformulated gasoline or RBOB under § 80.82, documentation of:

(i) The volume of butane added;

(ii) The volume of reformulated gasoline or RBOB both prior to and subsequent to the butane blending;

(iii) The purity and properties of the butane specified in § 80.82(c) and (d), as appropriate;

(iv) Compliance with the requirements of § 80.82; and

(9) In the case of any imported GTAB, documents that reflect the storage and physical movement of the GTAB from the point of importation to the point of blending to produce reformulated gasoline.

* * * * *

■ 12. Section 80.75 is amended by revising the paragraph (a) introductory text and paragraphs (a)(2)(vii) and (a)(2)(viii)(D); and adding paragraphs (a)(2)(ix), (a)(2)(x) and (o), to read as follows:

§ 80.75 Reporting requirements.

* * * * *

(a) *Quarterly reports for reformulated gasoline.* Any refiner or importer that produces or imports any reformulated gasoline or RBOB, and any oxygenate blender that produces reformulated gasoline meeting the oxygen standard on average, shall submit quarterly reports to the Administrator for each refinery or oxygenate blending facility at which such reformulated gasoline or RBOB was produced and for all such reformulated gasoline or RBOB imported by each importer. The refiner, importer or oxygenate blender shall include notification to EPA of per-gallon versus average election with the first quarterly reports submitted each year.

* * * * *

(2) * * *

(vii) For any oxygenate blender, the oxygen content;

(viii) * * *

(D) The volume, properties and designation of the batch;

(ix) In the case of butane blended with reformulated gasoline or RBOB under § 80.82:

(A) Identification of the butane batch as complying with the provisions of § 80.82;

(B) Identification of the butane batch as commercial or non-commercial grade butane;

(C) The batch number of the butane;

(D) The date of production of the gasoline produced using the butane batch;

(E) The volume of the butane batch;

(F) The properties of the butane batch specified by the butane supplier, or the properties specified in § 80.82(c) or (d), as appropriate;

(G) The volume of the gasoline batch subsequent to the butane blending; and

(x) In the case of any imported GTAB, identification of the gasoline as GTAB.

* * * * *

(o) *Additional reporting requirements for refiners that blend butane with reformulated gasoline or RBOB.* For refiners that blend any butane with reformulated gasoline or RBOB under § 80.82, the refiner shall submit to the Administrator, by the last day of February of each year, a report for the refinery which includes the following information for the previous calendar year:

(1) The total volume of butane blended with reformulated gasoline or RBOB at the refinery, separately for reformulated gasoline and RBOB;

(2) The total volume of reformulated gasoline or RBOB produced using butane, separately for reformulated gasoline and RBOB;

(3) A statement that each gallon of reformulated gasoline or RBOB produced using butane met the applicable per-gallon standards under § 80.41;

(4) A statement that all butane blended with reformulated gasoline or RBOB at the refinery is included in the volume reported in paragraph (o)(2) of this section;

■ 13. Section 80.76 is amended by revising paragraph (b) to read as follows:

§ 80.76 Registration of refiners, importers or oxygenate blenders.

* * * * *

(b) Any person required to register shall do so by November 1, 1994, or not later than three months in advance of the first date that such person will produce or import reformulated gasoline or RBOB or conventional gasoline, whichever is later.

* * * * *

■ 14. Section 80.77 is amended by revising paragraphs (c), (f), (g)(3) and (i), and removing paragraph (j) to read as follows:

§ 80.77 Product transfer documentation.

* * * * *

(c) The volume of gasoline or RBOB which is being transferred;

* * * * *

(f) The proper identification of the product as reformulated gasoline or RBOB;

(g) * * *

(3) In the case of VOC-controlled reformulated gasoline that contains ethanol, identification or the gasoline as containing ethanol.

* * * * *

(i) In the case of RBOB:

(1) The designation of the RBOB as suitable for blending with:

(i) Any-oxygenate;

(ii) Ether-only; or

(iii) Other specified oxygenate type(s) and amount(s);

(2) The oxygenate type(s) and amount(s) which the RBOB requires in order to meet the properties claimed by the refiner or importer of the RBOB; and

(3) Instructions that the RBOB may not be combined with any other RBOB except other RBOB having the same requirements for oxygenate type(s) and amount(s), or, prior to blending, with reformulated gasoline.

■ 15. Section 80.78 is amended by removing and reserving paragraphs (a)(1)(iii) and (a)(3), revising the paragraph (a)(11) introductory text, and adding paragraph (a)(12) to read as follows:

§ 80.78 Controls and prohibitions on reformulated gasoline.

(a) * * *

(11) The prohibition against combining reformulated gasoline with RBOB under paragraph (a)(7) of this section does not apply in the case of a party who is changing the type of product stored in a tank from which trucks are loaded, from reformulated gasoline to RBOB, or vice versa, provided that:

* * * * *

(12)(i) The prohibited activities specified in paragraph (a)(1) of this section do not apply in the case of gasoline that is used to fuel aircraft, or racing motor vehicles or racing boats that are used only in sanctioned racing events, provided that product transfer documents associated with such gasoline, and any pump stand from which such gasoline is dispensed, identify the gasoline either as conventional gasoline that is restricted for use in aircraft, or as conventional gasoline that is restricted for use in racing motor vehicles or racing boats that are used only in sanctioned racing events.

(ii) A vehicle shall be considered to be a racing vehicle only if the vehicle:

(A) Is operated in conjunction with sanctioned racing events;

(B) Exhibits racing features and modifications such that it is incapable of safe and practical street or highway use;

(C) Is not licensed, and is not licensable, by any state for operation on public streets or highways;

(D) Is not operated on public streets or highways; and

(E) Could not be converted to public street or highway use at a cost that is reasonable compared to the value of the vehicle.

* * * * *

■ 16. Section 80.81 is amended by:

■ a. Revising paragraphs (c)(2), (c)(5), (c)(6) and (c)(10); and removing and reserving paragraph (c)(4); and

■ b. Revising paragraph (g)(1)(vi) and removing paragraph (g)(1)(vii), to read as follows:

§ 80.81 Enforcement exemptions for California gasoline.

* * * * *

(c) * * *

(2) The designation of gasoline requirements contained in § 80.65(d);

* * * * *

(5) The annual compliance audit requirements contained in § 80.65(h);

(6) The downstream oxygenate blending requirements contained in § 80.69;

* * * * *

(10) The compliance attest engagement requirements contained in subpart F of this part.

* * * * *

(g)(1) * * *

(vi) The identification of the gasoline as California gasoline.

* * * * *

■ 17. Section 80.82 is revised to read as follows:

§ 80.82 Butane blending.

A refiner for any refinery that produces gasoline by blending butane with conventional gasoline or reformulated gasoline or RBOB may meet the sampling and testing requirements of subparts D and E of this part as follows:

(a) Any refinery that blends butane for which the refinery has documents from the butane supplier which demonstrate that the butane is commercial grade, as defined in paragraph (c) of this section, may demonstrate compliance with the standards in subparts D and E of this part based on the properties specified in paragraph (c) of this section, or the properties specified by the butane supplier.

(b)(1) Any refiner that blends butane for which the refiner has documents from the butane supplier which demonstrate that the butane is non-commercial grade, as defined in paragraph (d) of this section, may demonstrate compliance with the standards in subparts D and E of this part based on the properties specified in paragraph (d) of this section, or the properties specified by the butane supplier, provided that the refinery:

(i) Conducts a quality assurance program of sampling and testing the butane obtained from each separate butane supplier which demonstrates that the butane has the properties

specified in paragraph (d) of this section; and

(ii) The frequency of sampling and testing for the butane received from each butane supplier must be one sample for every 500,000 gallons of butane received, or one sample every three months, whichever is more frequent.

(2) Where test results indicate the butane does not meet the requirements in paragraph (b)(1) of this section, the refiner may:

(i) Blend the butane with conventional gasoline, or reformulated gasoline that has been downgraded to conventional gasoline, provided that the equivalent emissions performance of the butane batch, as determined using the provisions in § 80.101(g)(3), meets the refinery's standards under § 80.101;

(ii) Blend the butane with reformulated gasoline or RBOB, provided that the final batch of butane blended with reformulated gasoline or RBOB meets the per-gallon standards in § 80.41, as determined using the test methods in § 80.46.

(c) Commercial grade butane is defined as butane for which test results demonstrate that the butane is 95% pure and has the following properties:

olefins ≤1.0 vol%
aromatics ≤2.0 vol%
benzene ≤0.03 vol%
sulfur ≤140 ppm until December 31, 2003; ≤120 ppm in 2004; ≤30 ppm beginning January 1, 2005 and thereafter

(d) Non-commercial grade butane is defined as butane for which test results demonstrate the butane has the following properties:

olefins ≤10.0 vol%
aromatics ≤2.0 vol%
benzene ≤0.03 vol%
sulfur ≤140 ppm until December 31, 2003; ≤120 ppm in 2004; ≤30 ppm beginning January 1, 2005 and thereafter

(e)(1) When butane is blended with conventional gasoline under this section during the period May 1 through September 15, the refiner shall demonstrate through sampling and testing, using the test method for Reid vapor pressure in § 80.46, that each batch of conventional gasoline blended with butane meets the volatility standards specified in § 80.27.

(2) Butane may not be blended with any reformulated gasoline or RBOB during the period April 1 through September 30, or with any reformulated gasoline or RBOB designated as VOC-controlled, under this section.

(f) When butane is blended with conventional gasoline or reformulated gasoline or RBOB under this section, product transfer documents which accompany the gasoline blended with butane must comply with all of the requirements of § 80.77 or § 80.106, as appropriate.

(g) Butane blended with reformulated gasoline or RBOB or conventional gasoline during a period of up to one month may be included in a single batch for purposes of reporting to EPA, however, commercial grade butane and non-commercial grade butane must be reported as separate batches.

(h) Where a refiner chooses to include butane blended with gasoline in the refinery's annual average compliance calculations:

(1) In the case of butane blended with conventional gasoline, the equivalent emissions performance of the butane must be calculated in accordance with the provisions of § 80.101(g)(3). For purposes of this paragraph (i)(1), the property values in § 80.82(c) or (d), as appropriate, may be used;

(2) In the case of butane blended with reformulated gasoline or RBOB, compliance with the reformulated gasoline standards may not be demonstrated using the provisions of this section;

(3) All butane blended into gasoline during the annual averaging period must be included in annual average compliance calculations for the refinery.

■ 18. Section 80.83 is revised to read as follows:

§ 80.83 Gasoline treated as blendstock.

An importer may treat imported gasoline (as defined in § 80.2(c)) as blendstock (Gasoline Treated as Blendstock, or GTAB) and exclude the GTAB from its importer compliance calculations under § 80.65(c) for reformulated gasoline or under § 80.101(d) for conventional gasoline, provided the importer meets the requirements specified in this section.

(a) GTAB must be used as a blendstock in a refinery operation to produce gasoline.

(b) GTAB must be included in the compliance calculations for gasoline produced at a refinery operated by the same person or entity that is the importer (the ''GTAB importer-refiner'').

(c) The GTAB importer-refiner may not transfer title to GTAB to another person until the GTAB has been used to produce gasoline and all refinery standards and requirements have been met for the gasoline produced.

(d) The refinery at which GTAB is used to produce gasoline must be physically located at the same terminal at which the GTAB is first discharged upon arrival in the United States (the import facility), or at a facility to which the GTAB is directly transported from the import facility.

(e)(1) GTAB must be completely segregated from any previously certified gasoline, whether conventional or RFG or RBOB, and including any gasoline tank bottoms, prior to the point of blending, sampling and testing, in the refinery operation, except that:

(i) GTAB may be placed in a storage tank that contains previously certified gasoline provided that the blending is performed in that storage tank, and:

(A) The previously certified gasoline has the same designations under § 80.65(d) as the gasoline which will be produced using the GTAB, and the volume and properties of the gasoline produced using GTAB are determined in a manner that excludes the volume and properties of the previously certified gasoline; or

(B) In the case of GTAB used to produce reformulated gasoline or RBOB, the requirements in § 80.65(i) are met, or in the case of GTAB used to produce conventional gasoline, the requirements in § 80.101(g)(9) are met.

(ii) [Reserved]

(2) GTAB may be placed in a storage tank that contains other GTAB imported by that importer.

(f) Each year that GTAB is used to produce gasoline, the GTAB importer-refiner must determine an adjusted baseline for the refinery where the GTAB is used to produce gasoline that would be subject to the conventional gasoline standards under § 80.101(b), and prior to 1998, the reformulated gasoline standards under § 80.41(h)(2)(i), for all gasoline produced at that refinery for that year.

(1) The following formulas must be used to calculate the adjusted refinery baseline where GTAB is used to produce conventional gasoline:

(i) If $(V_a - V_{GTAB}) > V_{1990}$; then

$$AB_i = \frac{\left(V_{1990} * RB_i\right) + \left(V_{CGTAB} * IB_i\right) + \left(\left(V_a - V_{1990} - V_{CGTAB}\right) * SB_i\right)}{V_a}$$

(ii) If $(V_a - V_{GTAB}) < V_{1990}$; then

$$AB_i = \frac{\left(\left(V_{Conv} - V_{CGTAB}\right) * RB_i\right) + \left(V_{CGTAB} * IB_i\right)}{V_{Conv}}$$

(2) The following formula must be used to calculate the adjusted refinery baseline where GTAB is used to produce reformulated gasoline prior to January 1, 1998:

$$AB_i = \frac{\left(V_{RGTAB} * IB_i\right) + \left(\left(V_{RFG} - V_{RGTAB}\right) * RB_i\right)}{V_{RFG}}$$

(3) The following definitions apply to the terms in the equations in paragraph (e)(1) and (e)(2) of this section:

$V_{GTAB} = V_{RGTAB} + V_{CGTAB}$

AB_i = Adjusted baseline for parameter or emissions performance i.

V_{1990} = 1990 baseline volume for the refinery.

V_a = Volume of reformulated gasoline, conventional gasoline and RBOB produced at the refinery during the year (averaging period) in question, including the volume of gasoline produced using GTAB.

V_{RFG} = Volume of reformulated gasoline and RBOB produced at the refinery during the year in question.

V_{Conv} = Volume of conventional gasoline produced at the refinery during the year in question.

V_{RGTAB} = Volume of GATB used to produce reformulated gasoline at the refinery during the year in question.

V_{CGTAB} = Volume of GTAB used to produce conventional gasoline at the refinery during the year in question.

RB_i = 1990 refinery baseline for parameter or emissions performance i.

IB_i = Baseline for parameter or emissions performance i that applies to the GTAB importer-refiner in its importer capacity.

SB_i = Statutory baseline for parameter or emissions performance i.

(g)(1) The GTAB importer-refiner must complete all requirements for the GTAB at the time it is imported as if the GTAB were imported gasoline, including sampling and testing, independent sampling and testing for GTAB used to produce reformulated gasoline, recordkeeping and reporting.

(2) The volume and properties of GTAB that has been combined with other GTAB may be determined by subtracting the volume and properties of the GTAB in the tank prior to receipt of the new product, from the volume and properties of the GTAB in the tank subsequent to receipt of the new product.

(3) Any GTAB batch that is used in whole or in part to produce reformulated gasoline must be treated as imported reformulated gasoline for purposes of sampling and testing, and reporting, under paragraph (g)(1) of this section; except that the sampling and testing may be based on vessel composite samples without regard to whether the gasoline in individual ship compartments separately meets the reformulated gasoline downstream standards.

(4) Any reports to EPA for imported GTAB must identify the GTAB as such.

(5) Any GTAB that ultimately is not used to produce gasoline must be treated as newly imported gasoline, for which all required sampling and testing, recordkeeping and reporting must be accomplished, and the gasoline must be included in the GTAB importer-refiner's importer compliance calculations for the averaging period that includes the date this sampling and testing occurs.

Subpart E—[Amended]

■ 19. Section 80.101 is amended by:

■ a. Revising the heading in paragraph (g)(9), and paragraphs (g)(9)(i) through (g)(9)(iv); and

■ b. Adding paragraph (i)(3), to read as follows:

§ 80.101 Standards applicable to refiners and importers.

* * * * *

(g) * * *

(9) *Exclusion of previously certified gasoline.* (i) Any refiner who uses previously certified reformulated or conventional gasoline or RBOB to produce conventional gasoline at a refinery, must exclude the previously certified gasoline for purposes of demonstrating compliance with the standards under paragraph (b) of this section.

(ii) To accomplish the exclusion required in paragraph (g)(9)(i) of this section, the refiner must determine the volume and properties of the previously certified gasoline used at the refinery, and the volume and properties of gasoline produced at the refinery, and use the compliance calculation procedures in paragraphs (g)(9)(iii) and (g)(9)(iv) of this section.

(iii) For each batch of previously certified gasoline that is used to produce conventional gasoline the refiner must:

(A) Determine the volume and properties using the procedures in paragraph (i) of this section;

(B) Determine the exhaust toxics and NO_X emissions performance using the summer or winter complex model as appropriate;

(C) Include the volume and emissions performance of the previously certified gasoline as a negative volume and a negative emissions performance in the refiner's compliance calculations for the refinery, or where applicable, the refiner's aggregation under paragraph (h) of this section, for exhaust toxics and NO_X.

(iv) For each batch of conventional gasoline produced at the refinery using previously certified gasoline, the refiner must determine the volume and properties, and exhaust toxics and NO_X emissions performance, and include each batch in the refinery's compliance calculations for exhaust toxics and NO_X without regard to the presence of previously certified gasoline in the batch.

* * * * *

(i) * * *

(3) An importer who imports conventional gasoline into the United States by truck may meet the sampling and testing requirements under paragraph (i)(1) of this section as follows:

(i)(A) The importer must demonstrate that the imported gasoline meets the applicable conventional gasoline

standards, through test results of samples of the gasoline contained in the storage tank from which the trucks used to transport gasoline into the United States are loaded.

(B) The frequency of this sampling and testing must be subsequent to each receipt of gasoline into the storage tank, or immediately prior to each transfer of gasoline to the importer's truck.

(C) The testing must be for each applicable parameter specified under § 80.65(e)(2)(i), using the test methods specified under § 80.46.

(D) The importer must obtain a copy of the terminal test results that reflects the quality of each truck load of gasoline that is imported into the United States.

(ii)(A) The importer must conduct separate programs of periodic quality assurance sampling and testing of the gasoline obtained from each truck-loading terminal, to ensure the accuracy of the terminal test results.

(B) The quality assurance samples must be obtained from the truck-loading terminal by the importer, and terminal operator may not know in advance when samples are to be collected.

(C) The importer must test each sample (or use a laboratory that is independent under § 80.82(b)(2) to test the sample) for the parameters specified under § 80.65(e)(2)(i) using the test methods specified under § 80.46, and the results must correlate with the terminal's test results within the ranges specified under § 80.65(e)(2)(i).

(D) The frequency of quality assurance sampling and testing must be at least one sample for each fifty of an importer's trucks that are loaded at a terminal, or one sample per month, whichever is more frequent.

(iii) The requirements of paragraph (i)(3)(ii) of this section are satisfied if the sampling and testing required under paragraph (i)(3)(i) is conducted by a laboratory that is an independent laboratory under the criteria of § 80.82(b)(2).

(iv) The importer must treat each truck load of imported gasoline as a separate batch for purposes of assigning batch numbers under § 80.101(i), recordkeeping under § 80.104, and reporting under § 80.105.

(v) EPA inspectors or auditors, and auditors conducting attest engagements under subpart F, must be given full and immediate access to the truck-loading terminal and any laboratory at which samples of gasoline collected at the terminal are analyzed, and be allowed to conduct inspections, review records, collect gasoline samples, and perform audits. These inspections or audits may be either announced or unannounced.

(vi) In the event the requirements specified in paragraphs (i)(3)(i) through (v) of this section are not met, in whole or in part, the importer shall immediately lose the option of importing gasoline under the terms of this paragraph (i)(3).

* * * * *

■ 20. Section 80.104 is amended by adding and reserving paragraph (a)(2)(xiii), and adding paragraphs (a)(2)(xiv) and (a)(2)(xv) to read as follows:

§ 80.104 Recordkeeping requirements.

* * * * *

(a) * * *

(2) * * *

(xiv) In the case of butane blended into conventional gasoline under § 80.82, documentation of:

(A) The volume of the butane added;

(B) The volume of the gasoline prior to and subsequent to the butane blending;

(C) The purity and properties of the butane under § 80.82(c) and (d), as appropriate; and

(D) Compliance with the requirements of § 80.82.

(xv) In the case of any imported GTAB, documents that reflect the physical movement of the GTAB from the point of importation to the point of blending to produce gasoline.

* * * * *

■ 21. Section 80.105 is amended by:

■ a. Revising paragraphs (a)(5)(iv), (a)(5)(v), and (a)(5)(vi)(D); and adding paragraphs (a)(5)(vii), (a)(5)(viii) and (a)(7); and

■ b. Revising paragraph (c) to read as follows:

§ 80.105 Reporting requirements.

(a) * * *

(5) * * *

(iv) The grade of gasoline produced (i.e., premium, mid-grade, or regular);

(v) The properties, pursuant to § 80.101(i);

(vi) * * *

(D) The volume, properties and designation of the batch;

(vii) In the case of butane blended with conventional gasoline under § 80.82:

(A) Identification of the butane batch as complying with the provisions of § 80.82;

(B) Identification of the butane batch as commercial or non-commercial grade butane;

(C) The batch number of the butane;

(D) The date of production of the gasoline produced using the butane;

(E) The volume of the butane batch;

(F) The properties of the butane batch specified by the butane supplier, or the properties specified in § 80.82(c) or (d), as appropriate.

(G) Where butane is blended with conventional gasoline during the period May 1 through September 15, the Reid vapor pressure, as measured using the appropriate test method in § 80.46; and

(viii) In the case of any imported GTAB, identification of the gasoline as GTAB.

* * * * *

(7) For refiners that blend any butane with conventional gasoline under § 80.82, the report required under paragraph (a) of this section must include the following information for the annual averaging period:

(i) The total volume of butane blended with conventional gasoline;

(ii) The total volume of conventional gasoline produced using butane;

(iii) A statement that the gasoline produced using butane meets all applicable downstream standard that apply to conventional gasoline under Subpart E; and

(iv) A statement that all butane blended with conventional gasoline at the refinery is included in the volume under paragraph (a)(7)(i) of this section, or a statement that all butane blended with conventional gasoline is included in the refinery's annual average compliance calculations under § 80.101.

* * * * *

(c) For each averaging period, each refiner for each refinery and importer shall cause to be submitted to the Administrator of EPA, by May 31 of each year, a report in accordance with the requirements for the Attest Engagements of § 80.125 through § 80.131.

* * * * *

■ 22. Section 80.106 is amended by revising paragraphs (a)(1)(v) and (a)(1)(vi), and removing paragraph (a)(1)(vii) to read as follows:

§ 80.106 Product transfer documents.

(a)(1) * * *

(v) The date of the transfer; and

(vi) The following statement: ''This product does not meet the requirements for reformulated gasoline, and may not be used in any reformulated gasoline covered area.''

* * * * *

Subpart F—[Amended]

■ 23. Section 80.125 is amended by adding paragraphs (a)(1), (a)(2) and (a)(3) to read as follows:

§ 80.125 Attest engagements.

(a) * * *

(1) In the case of any refiner or importer of reformulated or

conventional gasoline, the attest procedures in § 80.133 shall be completed, or, prior to the 2006 reporting period, the attest procedures in § 80.128 may be completed as an alternative to the attest procedures in § 80.133.

(2) In the case of any oxygenate blender who meets the oxygen standard on average, the attest procedures in § 80.134 shall be completed, or, prior to the 2006 reporting period, the attest procedures in § 80.129 may be completed as an alternative to the § 80.134 attest procedures.

(3) In the case of any importer who imports any gasoline classified as GTAB under § 80.83, any importer who imports conventional gasoline by truck under § 80.101(i), any refiner who uses previously certified gasoline under §§ 80.65(i) or 80.101(g)(9), or any refiner who blends butane under § 80.101(i)(4), the attest procedures in § 80.131 shall be completed.

* * * * *

■ 24. Section 80.126 is amended by revising paragraphs (e) and (f), and adding paragraphs (h) through (l), to read as follows:

§ 80.126 Definitions.

* * * * *

(e) *Product transfer documents* means copies of documents represented by the refiner/importer/oxygenate blender as having been provided to the transferee, and that reflect the transfer of ownership or physical custody of gasoline or blendstock (e.g., invoices, receipts, bills of lading, manifests, and/or pipeline tickets).

(f) *Tender* means the transfer of ownership or physical custody of a volume of gasoline or other petroleum product all of which has the same identification (reformulated gasoline, conventional gasoline, RBOB, and other non-finished-gasoline petroleum products), and characteristics (time and place of use restrictions for reformulated gasoline and RBOB).

* * * * *

(h) *Attestor* means the CPA or CIA performing the agreed-upon procedures engagement under this subpart.

(i) *Foot (or crossfoot)* means to add a series of numbers, generally in columns (or rows), to a total amount. When applying the attestation procedures in this subpart F, the attestor may foot to subtotals on a sample basis in those instances where subtotals (e.g., page totals) exist. In such instances, the total should be footed from the subtotals and the subtotals should be footed on a test basis using no less than 25% of the subtotals.

(j) *Laboratory Analysis* means the original test result for each analysis that was used to determine a product's properties. For laboratories using test methods that must be correlated to the standard test method, the correlation factors and results shall be included as part of the laboratory analysis. For refineries or importers that produce reformulated gasoline or RBOB and use the 100% independent lab testing, the laboratory analysis shall consist of the results reported to the refinery or importer by the independent lab. Where assumed properties used (e.g., for butane) the assumed properties may serve as the test results.

(k) *Non-finished-gasoline petroleum products* means liquid petroleum products that have boiling ranges greater than 75 degrees Fahrenheit, but less than 450 degrees Fahrenheit, as per ASTM D 86 or equivalent.

(l) *Reporting period* means the time period relating to the reports filed with EPA by the refiner, importer, or oxygenate blender, and generally is the calendar year.

■ 25. Section 80.128 is amended by revising the heading and introductory text; revising paragraphs (e)(2), (e)(4) and (e)(5); and removing paragraph (e)(6) to read as follows:

§ 80.128 Alternative agreed upon procedures for refiners and importers.

Prior to the attest report for the 2006 reporting period, the following minimum attest procedures may be carried out for a refinery or importer, in lieu of the attest procedures specified in § 80.133.

* * * * *

(e) * * *

(2) Determine that the requisite contract was in place with the downstream blender designating the required blending procedures, or that the refiner or importer accounted for the RBOB using the assumptions in § 80.69(a)(8) in the case of RBOB designated as ''any oxygenates'' or ''ether only'';

* * * * *

(4) Trace back to the batch or batches in which the RBOB was produced or imported. Obtain the refiner's or importer's internal lab analysis for each batch and agree the consistency of the type and volume of oxygenate required to be added to the RBOB with that indicated in the applicable tender's product transfer documents; and

(5) Agree the sampling and testing frequency of the refiner's or importer's downstream oxygenated blender quality assurance program with the sampling and testing rates as required in § 80.69(a)(7).

* * * * *

■ 26. Section 80.129 is amended by revising the heading and introductory text; revising paragraphs (a), (d)(3)(iii) and (d)(3)(iv), and removing paragraph (d)(3)(v) to read as follows:

§ 80.129 Alternative agreed upon procedures for oxygenate blenders.

Prior to the attest report for the 2006 reporting period, the following minimum attest procedures may be carried out for an oxygenate blending facility that is subject to the requirements of this subpart F, in lieu of the attest procedures specified in § 80.134:

(a) Read the oxygenate blender's reports filed with EPA for the previous year as required by § 80.75.

* * * * *

(d) * * *

(3) * * *

(iii) Recalculate the actual oxygen content based on the volumes blended and agree to the report to EPA on oxygen; and

(iv) Review the time and place designations in the product transfer documents prepared for the batch by the blender, for consistency with the time and place designations in the product transfer documents for the RBOB (e.g., VOC controlled or non-VOC controlled, VOC region for VOC controlled, and simple or complex model).

* * * * *

■ 27. Section 80.131 is revised to read as follows:

§ 80.131 Agreed upon procedures for GTAB, certain conventional gasoline imported by truck, previously certified gasoline used to produce gasoline, and butane blenders.

(a) *Attest procedures for GTAB.* The following are the attest procedures to be carried out in the case of an importer who imports gasoline classified as blendstock (or ''GTAB'') under the terms of § 80.83:

(1) Obtain a listing of all GTAB volumes imported for the reporting period. Agree the total volume of GTAB from the listing to the inventory reconciliation analysis under § 80.133, or agree to alternative documents if the inventory reconciliation analysis is not sufficient.

(2) Obtain a listing of all GTAB batches reported to EPA by the importer. Agree the total volume of GTAB from the listing to the GTAB volumes reported to EPA. Note that the EPA report includes a notation that the batch is not included in the compliance calculations because the imported

product is GTAB. Also, agree these volumes to the Import Summary received from the U.S. Customs Service.

(3) Select a sample, in accordance with the guidelines in § 80.127, from the listing of GTAB batches obtained in paragraph (a)(2) of this section, and for each GTAB batch selected perform the following:

(i) Trace the GTAB batch to the tank activity records. From the tank activity records, determine the volumes of conventional gasoline and of RFG produced. Agree the volumes from the tank activity records to the batch volume reported to the EPA as reformulated or conventional gasoline.

(ii) Agree the location of the refinery represented by the tank activity records obtained in paragraph (a)(3)(i) of this section for the gasoline produced from GTAB, to the location that the GTAB arrived in the U.S. or at a facility to which GTAB is directly transported from the import facility using records representing location (e.g., U.S. Customs Service entry records). Using product transfer records, trace volumes transported from the import facility directly to the refinery as applicable.

(iii) Obtain tank activity records for all batches of GTAB received and blended. Using the tank activity records, determine whether the GTAB was received into an empty tank, or into a tank containing other GTAB imported by that importer or finished gasoline of the same category as the gasoline that will be produced using the GTAB or into a tank containing blendstock.

(iv) Using the tank activity records obtained under paragraph (a)(3)(iii) of this section, determine the volume of any tank bottom (beginning tank inventory) that is previously certified gasoline before GTAB is added to the tank. Using lab reports, batch reports, or product transfer documents, determine the properties of the tank bottom.

(v) Determine whether the properties and volume of gasoline produced using GTAB were determined in a manner that excludes the volume and properties of any gasoline that previously has been included in any refiners or importers compliance calculations, as follows:

(A) Note documented tank mixing procedures.

(B) Determine the volume and properties of the gasoline contained in the storage tank after blending is complete. Mathematically subtract the volume and properties of the previously certified gasoline to determine the volume and properties of the GTAB plus blendstock added. Agree the volume and properties of the GTAB plus blendstock added to the volume reported to EPA as a batch of gasoline produced; or

(C) In the alternative, using the tank activity records, note that only GTAB and blending components were combined, and that no gasoline was added to the tank. Agree the volumes and properties of the shipments from the tank after the GTAB and blendstock are added, blended, and sampled and tested, to the volumes and properties reported to the EPA by the refiner.

(vi) Obtain the importer's laboratory analysis for each batch of GTAB selected, and agree the properties listed in the corresponding batch report submitted to the EPA, to the laboratory analysis.

(b) *Attest procedures for certain truck imports.* The following are the attest procedures to be carried out in the case of an importer who imports conventional gasoline into the United States by truck using the sampling and testing option in § 80.101(i)(3) (''§ 80.101(i)(3) truck imports'').

(1) Obtain a listing of all volumes of § 80.101(i)(3) truck imports for the reporting period. Agree the total volume of § 80.101(i)(3) truck imports from the listing to the inventory reconciliation analysis under § 80.132.

(2) Obtain a listing of all § 80.101(i)(3) truck import batches reported to EPA by the importer. Agree the total volume of § 80.101(i)(3) truck imports from the listing to the volume of § 80.101(i)(3) truck imports reported to EPA. Also, agree these totals to the Import Summary received from the U.S. Customs Service.

(3) Select a sample, in accordance with the guidelines in § 80.127, from the listing obtained in paragraph (b)(2) of this section, and for each § 80.101(i)(3) truck import batch selected perform the following:

(i) Obtain the copy of the terminal test results for the batch, under § 80.101(i)(3)(iii)(A), and determine that the sample was analyzed using the test methods specified in § 80.46, and agree the terminal test results to the batch properties reported to EPA; and

(ii) Obtain tank activity records for the terminal storage tank showing receipts, discharges, and sampling, and determine that the sample under paragraph (b)(3)(i) of this section was collected subsequent to the most recent receipt into the storage tank.

(4) Obtain listings for each terminal where § 80.101(i)(3) truck import gasoline was loaded, of all quality assurance samples collected by the importer, and for each terminal select a sample in accordance with the guidelines in § 80.127 from the listing. For each quality assurance sample selected perform the following:

(i) Determine that the sample was analyzed by the importer or by an independent laboratory, and that the analysis was performed using the test methods specified in § 80.46;

(ii) Obtain the terminal's test results that correspond in time to the time the quality assurance sample was collected, and agree the terminal's test results with the quality assurance test results; and

(iii) Determine that the quality assurance sample was collected within the frequency specified in § 80.101(i)(3)(iv)(D).

(c) *Attest procedures for previously certified gasoline.* The following are the attest procedures to be carried out in the case of a refiner who uses previously certified gasoline under the requirements of §§ 80.65(i) and 80.101(g)(9).

(1) Obtain a listing of all batches of previously certified gasoline used under the requirements of § 80.65(i) which were received at the refinery during the reporting period. Agree the total volume of such previously certified gasoline from the listing to the inventory reconciliation analysis under § 80.133, or agree to alternative documents if the inventory reconciliation analysis is not sufficient.

(2) Obtain a listing of all previously certified gasoline batches reported to EPA by the refiner. Agree the total volume of previously certified gasoline from the listing of previously certified gasoline received in paragraph (c)(1) of this section to the volume of previously certified gasoline reported to EPA.

(3) Select a sample, in accordance with the guidelines in § 80.127, from the listing obtained in paragraph (c)(2) of this section, and for each previously certified gasoline batch selected perform the following:

(i) Trace the previously certified gasoline batch to the tank activity records. Confirm that the previously certified gasoline was included in a batch of reformulated or conventional gasoline produced at the refinery.

(ii) Obtain the refiner's laboratory analysis and volume measurement for the previously certified gasoline when received and agree the properties and volume listed in the corresponding batch report submitted to the EPA, to the laboratory analysis and volume measurements.

(iii) Obtain the product transfer documents for the previously certified gasoline when received and agree the designations from the product transfer documents to designations in the corresponding batch report submitted to EPA (reformulated gasoline, RBOB or

conventional gasoline, and designations regarding VOC control).

(d) *Attest procedures for butane blenders.* The following are the attest procedures to be carried out by a refiner who blends butane under § 80.82.

(1) Obtain a listing of all butane batches received at the refinery during the reporting period.

(2) Obtain a listing of all butane batches reported to EPA by the refiner for the reporting period. Agree the total volume of butane from the receipt listing to the volume of butane reported to EPA.

(3) Select a sample, in accordance with the guidelines in § 80.127, from the listing of butane batches reported to EPA, and for each butane batch selected perform the following:

(i) Trace the butane included in the batch to the documents provided to the refiner by the butane supplier for the butane. Determine, and report as a finding, whether these documents establish the butane was commercial grade, non-commercial grade, or neither commercial nor non-commercial grade as defined in § 80.82.

(ii) In the case of non-commercial grade butane, obtain the refiner's sampling and testing results for butane, and confirm that the frequency of the sampling and testing was consistent with the requirements in § 80.82.

■ 28. Section 80.133 is added to subpart F to read as follows:

§ 80.133 Agreed-upon procedures for refiners and importers.

The following are the minimum attest procedures that shall be carried out for each refinery and importer. Agreed upon procedures may vary from the procedures stated in this section due to the nature of the refiner's or importer's business or records, provided that any refiner or importer desiring to use modified procedures obtains prior approval from EPA.

(a) *EPA reports.* (1) Obtain and read a copy of the refinery's or importer's reports (except for batch reports) filed with the EPA as required by §§ 80.75 and 80.105 for the reporting period.

(2) In the case of a refiner's report to EPA that represents aggregate calculations for more than one refinery, obtain the refinery-specific volume and property information that was used by the refiner to prepare the aggregate report. Foot and crossfoot the refinery-specific totals and agree to the values in the aggregate report. The procedures in paragraphs (b) through (m) of this section then are performed separately for each refinery.

(3) Obtain a written representation from a company representative that the report copies are complete and accurate copies of the reports filed with the EPA.

(4) Identify, and report as a finding, the name of the commercial computer program used by the refiner or importer to track the data required by the regulations in this part, if any.

(b) *Inventory reconciliation analysis.* Obtain an inventory reconciliation analysis for the refinery or importer for the reporting period by product type (i.e., reformulated gasoline, RBOB, conventional gasoline, and non-finished-gasoline petroleum products), and perform the following:

(1) Foot and crossfoot the volume totals reflected in the analysis; and

(2) Agree the beginning and ending inventory amounts in the analysis to the refinery's or importer's inventory records. If the analysis shows no production of conventional gasoline or if the refinery or importer represents under paragraph (l) of this section that it has a baseline less stringent or equal to the statutory baseline, the analysis may exclude non-finished-gasoline petroleum products.

(3) Report as a finding the volume totals for each product type.

(c) *Listing of tenders.* For each product type other than non-finished gasoline petroleum products (i.e., reformulated gasoline, RBOB, conventional gasoline), obtain a separate listing of all tenders from the refinery or importer for the reporting period. Each listing should provide for each tender the volume shipped and other information as needed to distinguish tenders. Perform the following:

(1) Foot to the volume totals per the listings; and

(2) For each product type listed in the inventory reconciliation analysis obtained in paragraph (b) of this section, agree the volume total on the listing to the tender volume total in the inventory reconciliation analysis.

(d) *Listing of batches.* For each product type other than non-finished gasoline petroleum products (i.e., reformulated gasoline, RBOB, and conventional gasoline), obtain separate listings of all batches reported to the EPA and perform the following:

(1) Foot to the volume totals per the listings; and

(2) Agree the total volumes in the listings to the production volume in the inventory reconciliation analysis obtained in paragraph (b) of this section.

(e) *Reformulated gasoline tenders.* Select a sample, in accordance with the guidelines in § 80.127, from the listing of reformulated gasoline tenders obtained in paragraph (c) of this section, and for each tender selected perform the following:

(1) Obtain product transfer documents associated with the tender and agree the volume on the tender listing to the volume on the Product transfer documents; and

(2) Note whether the product transfer documents evidencing the date and location of the tender and the compliance model designations for the tender (VOC-controlled for Region 1 or 2, non VOC-controlled, and simple or complex model certified).

(f) *Reformulated gasoline batches.* Select a sample, in accordance with the guidelines in § 80.127, from the listing of reformulated gasoline batches obtained in paragraph (d) of this section, and for each batch selected perform the following:

(1) Agree the volume shown on the listing, to the volume listed in the corresponding batch report submitted to EPA; and

(2) Obtain the refinery's or importer's laboratory analysis and agree the properties listed in the corresponding batch report submitted to EPA, to the properties listed in the laboratory analysis.

(g) *RBOB tenders.* Select a sample, in accordance with the guidelines in § 80.127, from the listing of RBOB tenders obtained in paragraph (c) of this section, and for each tender selected perform the following:

(1) Obtain product transfer documents associated with the tender and agree the volume on the tender listing to the volume on the product transfer documents; and

(2) Inspect the product transfer documents evidencing the type and amount of oxygenate to be added to the RBOB.

(h) *RBOB batches.* Select a sample, in accordance with the guidelines in § 80.127, from the listing of RBOB batches obtained in paragraph (d) of this section, and for each batch selected perform the following:

(1) Obtain from the refiner or importer the oxygenate type and volume, and oxygen volume required to be hand blended with the RBOB, in accordance with § 80.69(a)(2) and (8);

(2) Agree the volume shown on the listing, as adjusted to reflect the oxygenate volume determined under paragraph (h)(1) of this section, to the volume listed in the corresponding batch report submitted to EPA; and

(3) Obtain the refinery's or importer's laboratory analysis of the RBOB hand blend and agree:

(i) The oxygenate type and oxygen amount determined under paragraph (h)(1) of this section, to the tested oxygenate type and oxygen amount listed in the laboratory analysis within

the acceptable ranges set forth at § 80.65(e)(2)(i); and

(ii) The properties listed in the corresponding batch report submitted to EPA to the properties listed in the laboratory analysis.

(4)(i) Categorize the RBOB batch reports into two groups:

(A) RBOB Batch reports showing:

(*1*) ''RBOB-any oxygenate'' with ethanol as oxygenate and an oxygen content of 2.0 weight percent; and

(*2*) ''RBOB-ethers only'' with only MTBE as oxygenate and an oxygen content of 2.0 weight percent; and

(B) All other RBOB batch reports.

(ii) Perform the following procedures for each batch report included in paragraph (h)(4)(i)(B) of this section:

(A) Obtain and inspect a copy of the executed contract with the downstream oxygenate blender (or with an intermediate owner), and confirm that the contract:

(*1*) Was in effect at the time of the corresponding RBOB transfer; and

(*2*) Allowed the company to sample and test the reformulated gasoline made by the blender.

(B) Obtain a listing of RBOB blended by downstream oxygenate blenders and the refinery's or importer's oversight test results, and select a representative sample, in accordance with the guidelines in § 80.127, from the listing of test results and for each test selected perform the following:

(*1*) Obtain the laboratory analysis for the batch, and agree the type of oxygenate used and the oxygenate content appearing in the laboratory analysis to the instructions stated on the product transfer documents corresponding to a RBOB receipt immediately preceding the laboratory analysis and used in producing the reformulated gasoline batch selected within the acceptable ranges set forth at § 80.65(e)(2)(i);

(*2*) Calculate the frequency of sampling and testing or the volume blended between the test selected and the next test; and

(*3*) Agree the frequency of sampling and testing or the volume blended between the test selected and the next test to the sampling and testing frequency rates stated in § 80.69(a)(7).

(i) *Conventional gasoline and conventional gasoline blendstock tenders.* Select a sample, in accordance with the guidelines in § 80.127, from the listing of the tenders of conventional gasoline and conventional gasoline blendstock that becomes gasoline through the addition of oxygenate only, and for each tender selected perform the following:

(1) Obtain product transfer documents associated with the tender and agree the volume on the tender listing to the volume on the product transfer documents; and

(2) Inspect the product transfer documents evidencing that the information required in § 80.106(a)(1)(vii) is included.

(j) *Conventional gasoline batches.* Select a sample, in accordance with the guidelines in § 80.127, from the conventional gasoline batch listing obtained in paragraph (d) of this section, and for each batch selected perform the following:

(1) Agree the volume shown on the listing, to the volume listed in the corresponding batch report submitted to EPA; and

(2) Obtain the refinery's or importer's laboratory analysis and agree the properties listed in the corresponding batch report submitted to EPA, to the properties listed in the laboratory analysis.

(k) *Conventional gasoline oxygenate blending.* Obtain a listing of each downstream oxygenate blending facility and its blender, as represented by the refiner/importer, as adding oxygenate used in the compliance calculations for the refinery or importer, or a written representation from the refiner for the refinery or importer that it has not used any downstream oxygenate blending in its conventional gasoline compliance calculations.

(1) For each downstream oxygenate blender facility, obtain a listing from the refiner or importer of the batches of oxygenate included in its compliance calculations added by the downstream oxygenate blender and foot to the total volume of batches per the listing;

(2) Obtain a listing from the downstream oxygenate blender of the oxygenate blended with conventional gasoline or sub-octane blendstock that was produced or imported by the refinery or importer and perform the following:

(i) Foot to the total volume of the oxygenate batches per the listing; and

(ii) Agree the total volumes in the listing obtained from the downstream oxygenate blender, to the listing obtained from the refiner or importer in paragraph (k)(1) of this section.

(3) Where the downstream oxygenate blender is a person other than the refiner or importer, as represented by management of the refinery or importer, perform the following:

(i) Obtain the contract from the refiner or importer with the downstream blender and inspect the contract evidencing that it covered the period when oxygenate was blended;

(ii) Obtain company documents evidencing that the refiner or importer has records reflecting that it conducted physical inspections of the downstream blending operation during the period oxygenate was blended;

(iii) Obtain company documents reflecting the refiner or importer audit over the downstream oxygenate blending operation and note whether these records evidencing the audit included a review of the overall volumes and type of oxygenate purchased and used by the oxygenate blender to be consistent with the oxygenate claimed by the refiner or importer, and that this oxygenate was blended with the refinery's or importer's gasoline or blending stock; and

(iv) Obtain a listing of test results for the sampling and testing conducted by the refiner or importer over the downstream oxygenate blending operation, and select a sample, in accordance with the guidelines in § 80.127, from this listing. For each test selected, agree the tested oxygenate volume with the oxygenate volume in the listing obtained from the oxygenate blender in paragraph (k)(2) of this section for this gasoline.

■ 29. Section 80.134 is added to subpart F to read as follows:

§ 80.134 Agreed-upon procedures for downstream oxygenate blenders.

The following are the minimum attest procedures that shall be carried out for each oxygenate blending facility that is subject to the requirements of this subpart F. Agreed upon procedures may vary from the procedures stated in this section due to the nature of the oxygenate blender's business or records, provided that any oxygenate blender desiring to use modified procedures obtains prior approval from EPA.

(a) *EPA blender reports.* Obtain and read a copy of the blender's reports filed with the EPA as required by § 80.75 for the reporting period. Obtain a written representation from a company representative that the copies are complete and accurate copies of the reports filed with the EPA.

(b) *Inventory reconciliation analysis.* (1) Obtain from the blender an inventory reconciliation analysis for the reporting period that summarizes:

(i) Receipts of RBOB, reformulated gasoline, and oxygenate;

(ii) Beginning and ending inventories of RBOB, reformulated gasoline, and oxygenate;

(iii) Production of reformulated gasoline; and

(iv) Tenders of RBOB and reformulated gasoline.

(2) Foot and the crossfoot volume totals reflected in the analysis.

(3) Agree the beginning and ending inventory amounts in the analysis to the blender's inventory records.

(c) *RBOB receipts.* Obtain a listing of all RBOB receipts for the reporting period, and perform the following:

(1) Foot to the total volume of RBOB receipts per the listing;

(2) Agree the total RBOB receipts volume reflected on the listing to the RBOB receipts volume on the inventory reconciliation analysis;

(3) Select a sample, in accordance with the guidelines in § 80.127, of RBOB receipts from the listing. For each selected RBOB receipt, obtain product transfer documents specifying the type and volume of oxygenate to be added to the RBOB.

(d) *Oxygenate receipts.* Obtain a listing of all oxygenate receipts for the reporting period, and perform the following:

(1) Foot to the total volume of oxygenate receipts per the listing;

(2) Agree the total oxygenate receipts volume reflected on the listing to the oxygenate receipts volume on the inventory reconciliation analysis.

(e) *Reformulated gasoline tenders.* Obtain a listing of all reformulated gasoline tenders for the reporting period, and perform the following:

(1) Foot to the total reformulated gasoline tenders per the listing;

(2) Agree the total reformulated gasoline tenders volume reflected on the listing to the reformulated gasoline tenders volume on the inventory reconciliation analysis;

(3) Select a sample, in accordance with the guidelines in § 80.127, of reformulated gasoline tenders from the listing, and for each tender selected perform the following:

(i) Obtain the product transfer documents associated with the tender and agree the volume on the tender listing to the volume on the product transfer documents.

(ii) Inspect the product transfer documents evidencing the date and location of the tender and the compliance model designations for the tender (VOC-controlled for Region 1 or 2, non VOC-controlled, and simple or complex model certified).

(f) *RBOB tenders.* Obtain a listing of all RBOB tenders during the reporting period, and perform the following:

(1) Foot to the total volume of RBOB per the listing;

(2) Agree the total RBOB tenders volume reflected on the listing to the RBOB tenders volume on the inventory reconciliation analysis.

(g) *Reformulated gasoline batches.* Obtain a listing of all reformulated gasoline batches produced during the reporting period, and perform the following:

(1) Foot to the total volume of reformulated gasoline batches produced per the listing;

(2) Agree the total reformulated gasoline batch volume reflected on the listing to the reformulated gasoline batch volume on the inventory reconciliation analysis.

(h) *Blender sampling and testing.* (1) For blenders who meet the oxygenate blending requirements by sampling and testing each batch of reformulated gasoline, select a sample, in accordance with the guidelines in § 80.127, of reformulated gasoline batches from the listing obtained in paragraph (g) of this section, and for each batch selected perform the following:

(i) Obtain the internal laboratory analysis for the batch, and agree the type of oxygenate used and the oxygen content appearing in the laboratory analysis to the instructions stated on the product transfer documents corresponding to a RBOB receipt immediately preceding the laboratory analysis and used in producing the reformulated gasoline batch selected.

(ii) Agree the oxygen content results of the laboratory analysis to the corresponding batch information reported to EPA.

(2) For blenders who meet the oxygen content standard on average without separately sampling and testing each batch, the following procedures shall be carried out:

(i) Obtain a listing of the oxygen compliance calculations, test the mathematic accuracy of the listing, and agree the volumetric calculations to the inventory reconciliation analysis.

(ii) Select a representative sample of the oxygen compliance calculations using the guidelines in § 80.127, and for each calculation selected:

(A) Confirm that the calculation represented gasoline production for a period no longer than one month;

(B) Confirm that the oxygenate blender properly performed the calculation, including that the oxygenate blender used the proper values for specific gravities, mole fraction, and denaturant content; and

(C) Agree the calculated oxygen value to the corresponding batch report to EPA.

(iii) Obtain records of the oxygenate blender's quality assurance program of sampling and testing, select a representative sample of the quality assurance sample selected using the guidelines in § 80.127, and for each quality assurance sample selected confirm the sample was collected within the required frequency.

(iv) For each RFG sample selected obtain the corresponding laboratory analysis and compare the oxygen content to the ranges specified by EPA.

(3) *Blenders using assumed values.* For blenders using the assumed values for ethanol denaturant content in the oxygen compliance calculation, obtain a chronological list of the ethanol samples tested in connection with the blender's quality assurance program, including the sampling dates and test results as to the oxygenate purity level. Select a sample, in accordance with the guidelines in § 80.127, of ethanol samples and perform the following:

(i) Obtain the laboratory analysis corresponding to the selection and compare the oxygenate purity level per the laboratory analysis to the level on the list; and

(ii) Based on the level of the oxygenate purity, inspect the listing evidencing that the frequency of the next sample made in connection with the blender's quality assurance program was at least once a month if oxygenate purity equals or exceeds 92.1%, or at least once every two weeks if the oxygenate purity is less than 92.1%, for any of the past four tests.

Subpart H—[Amended]

■ 30. Section 80.211 is added to subpart H to read as follows:

§ 80. 211 What are the requirements for treating imported gasoline as blendstock?

An importer may treat imported gasoline (as defined in § 80.2(c)) as gasoline treated as blendstock, or GTAB, under the provisions of § 80.83 for purposes of compliance with this subpart H.

■ 31. Section 80.410 is amended by revising paragraphs (f)(4)(ii) and (r)(1)(iv) to read as follows:

§ 80.410 What are the additional requirements for gasoline produced at foreign refineries having individual small refiner sulfur baselines, foreign refineries granted temporary relief under § 80.270, or baselines for generating credits during 2000 through 2003?

* * * * *

(f) * * *

(4) * * *

(ii) Be independent under the criteria specified in § 80.65(f)(2)(iii); and

* * * * *

(r) * * *

(1) * * *

(iv) The persons who will meet the independent third party and independent attest requirements for the foreign refinery have made the commitments required in paragraphs (f)(4)(iii) and (h)(7)(iii) of this section; and

* * * * *

[FR Doc. 05–23807 Filed 12–14–05; 8:45 am]

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December 15, 2005

Part IV

Environmental Protection Agency

40 CFR Part 80

Regulation of Fuels and Fuel Additives: Modifications to Standards and Requirements for Reformulated and Conventional Gasoline Including Butane Blenders and Attest Engagements; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[OAR–2003–0019 FRL–8006–4]

RIN 2060–AK77

Regulation of Fuels and Fuel Additives: Modifications to Standards and Requirements for Reformulated and Conventional Gasoline Including Butane Blenders and Attest Engagements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to take action on certain modifications to the reformulated and conventional gasoline regulations. Based on experience gained since the promulgation of these regulations, EPA proposed these modifications along with various others in a Notice of Proposed Rulemaking (NPRM) published on July 11, 1997. In final rules published on December 31, 1997 and December 28, 2001, EPA took final action on several of the modifications proposed in the July 11, 1997 NPRM. Today's action proposes to take action on many of the remaining modifications in the 1997 NPRM.

The modifications in today's proposed rule would correct technical errors, clarify certain provisions, and codify guidance previously issued by the Agency. This rule also would make several minor technical corrections to the RFG rule which were not included in the July 11, 1997 proposal, and make two minor technical corrections to the Tier 2 gasoline sulfur rule. The emissions benefits achieved from the RFG and conventional gasoline programs would not be reduced as a result of this proposed rule.

DATES: Comments must be received on or before February 13, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0019 by one of the following methods:

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

2. *Agency Web site: http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

3. *E-mail: http://www.epa.gov/docket,* attention ID No. OAR–2003–0019.

4. *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6406J, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of 2 copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.

5. *Hand Delivery:* EPA Docket Center, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, Mail Code: 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2003–0019. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Marilyn Bennett, Transportation and Regional Programs Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (6406J), Washington, DC 20460; telephone: (202) 343–9624; fax: (202) 343–2803, e-mail address: *mbennett@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially affected by this action include those involved with the production and importation of gasoline motor fuel. Regulated categories and entities affected by this action include:

Category	NAICS codes [a]	SIC codes [b]	Examples of regulated entities
Industry	324110	2911	Petroleum Refiners, Importers.
Industry	422710, 422720	5171, 5172	Gasoline Marketers and Distributors.
Industry	484220, 484230	4212, 4213	Gasoline Carriers.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, Subparts D, E and F, of title 40 of the Code of Federal Regulations. If you have questions regarding applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

3. *Docket Copying Costs.* You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR Part 2.

C. Outline of This Rule

I. General Information
II. Corrections of Typographical Errors and Minor Revisions
III. RFG and Anti-dumping Standards/Models
  A. Effective Dates for Standard Changes Due to Survey Failures
  B. Proper E300 Value for the Edge Target Fuel for Use in Complex Model Extrapolation
IV. RFG Compliance Requirements
  A. Clarification of Requirements to Test RFG and RBOB
  B. Transfer of Credits
  C. Compliance Survey Requirements
  D. Product Transfer Documentation (PTD)
  E. Exemption for Gasoline Used for Aviation and Racing Purposes
  F. References to Renewable Oxygenate Requirements
  G. Butane Blending
  H. Gasoline Treated as Blendstock (GTAB)
V. Anti-Dumping Requirements
  A. Imports of Gasoline by Truck
  B. Date for Submission of Attest Engagement Reports
VI. Attest Engagements
  A. Modification to Agreed-Upon Procedures in §§ 80.128 and 80.129, and Promulgation of Agreed-Upon Procedures in §§ 80.133 and 80.134
  B. Attest Procedures for GTAB, Previously Certified Gasoline (PCG), Truck Importers and Butane Blenders
VII. Public Participation
VIII. Statutory and Executive Order Reviews
IX. Statutory Provisions and Legal Authority

D. Modification of Provisions

Some of the provisions in today's rule may be modified in a future rulemaking to reflect a recent Congressional mandate requiring the removal of the RFG oxygen requirement.[1]

II. Corrections of Typographical Errors and Minor Revisions

In the July 7, 1997 Notice of Proposed Rulemaking (NPRM), EPA proposed the following corrections of typographical errors and minor revisions to the RFG and conventional gasoline regulations. EPA received either favorable or no comments on these changes. We are aware of no new information or circumstances arising since the proposal that would be likely to substantially change the impact or significance of these changes. Today's rule again proposes these changes.

§ 80.2(ww)	Adds a definition of "Gasoline Treated as Blendstock" or "GTAB," which is imported gasoline that is excluded from the import facility's compliance calculations, but is treated as blendstock in a related refinery that includes the GTAB in its refinery compliance calculations.
§ 80.2(ee)	Revises the definition of reformulated gasoline to delete the reference to a gasoline marker under § 80.82, since the current regulations do not include a requirement for a conventional gasoline marker.
§ 80.49 (a)	Corrects an incorrect reference to § 80.43(c). The correct reference is § 80.49(a)(5)(i).
§ 80.49(a)(1)	Corrects a typographical error in the formula at the bottom of the new parameter under Fuel 2. Change is from "C+B/2" to "(C+B)/2."
§ 80.49(a)(3)	Corrects an incorrect reference to § 80.43(c). The correct reference is to § 80.49(a)(5)(i).
§ 80.49(b)	Corrects an incorrect reference to § 80.43(c). The correct reference is § 80.49(a)(5)(i).
§ 80.50(a)(2)	Corrects an incorrect reference to § 80.49(a). The correct reference is § 80.49(b).
§ 80.65(e)(2)(ii)(B)	Revises to correct an inadvertent omission of the word "importer" in the first sentence.
§ 80.65(g)	Revises to delete heading: "Marking of conventional gasoline," since the regulations do not include provisions for requiring a conventional gasoline marker.
§ 80.68(b)(2)(ii)	Revises the word "area" to read "area(s)" to clarify the application of the equation to a situation in which more than one area fails a survey or survey series in a single year.

[1] Energy Policy Act of 2005, Pub. L. 109–58 (HR6), § 1504, 119 STAT 594, 1076–1077 (2005).

§ 80.69(a)(4)	Revises to delete this provision. This provision requires refiners and importers to determine the properties of reformulated gasoline blendstock for oxygenate blending (RBOB) which are sufficient to allow parties downstream from the refinery or importer to establish, through sampling and testing, if the RBOB has been altered or contaminated such that it will not meet the applicable RFG standards subsequent to the addition of the specified type and amount of oxygenate. This provision was intended to facilitate downstream quality assurance programs, however, since most RBOB is transported in a fungible manner, we believe there is little value to this requirement.
§ 80.69(e)(2)(i)(A)	Corrects a typographical error. The word ''to'' was inadvertently omitted in the final rule.
§ 80.69(e)(2)(v)	Corrects an incorrect reference to § 80.70(b)(2)(i). The correct reference is § 80.65(e)(2)(i).
§ 80.75(a)	Revises to require refiners, importers, and oxygenate blenders to include notification to EPA of per-gallon versus average election with the first quarterly reports submitted each year, in accordance with the provisions of § 80.65 (c)(3) which require refiners, importers and oxygenate blenders to designate whether, for a given parameter, all batches of gasoline are being subject to the per-gallon or average standards.

The following technical corrections are also being proposed to be made to the fuels regulations in 40 CFR Part 80. These corrections are not substantive in nature and do not change the requirements of the fuels programs.

§ 80.2(c)	Revises footnote 1 in § 80.2(c) to include the Northern Mariana Islands in the definition of ''State'' under 40 CFR Part 80, in accordance with the definition of ''State'' in § 3019(d) of the Clean Air Act. The exclusion of the Northern Mariana Islands from the list of U.S. territories in footnote 1 is an oversight in the current regulations.
§ 80.45(d)(1)(iv)(B)	Reinstates regulatory text inadvertently deleted from the Code of Federal Regulations (CFR) when certain changes were made to this section pursuant to a rulemaking on December 31, 1997 (62 FR 6819).
§ 80.65(d)(2)(iii)	Removes and reserves this section. This section relates to the oxygenated fuels program requirements (OPRG), which were eliminated by rulemaking on November 6, 1997 (62 FR 50132).
§ 80.74(b)(2)	Deletes the requirement to retain results of a test for the presence of a gasoline marker. The current regulations do not include a requirement for a gasoline marker.
§ 80.74(f)	Revises to remove and reserve this paragraph since the regulations do not include provisions for requiring a conventional gasoline marker.
§ 80.75(f)(2)(ii) and (f)(2)(iii)	Revises to delete references to OPRG requirements which have been eliminated.
§ 80.76(b)	Revises to delete reference to ''applicable blendstocks,'' since all requirements relating to applicable blendstocks have been eliminated.
§ 80.78(a)(1)(iii)	Deletes this provisions since it relates to OPRG requirements which have been eliminated.
§ 80.78(a)(11)	Revises to correct an incorrect reference to § 80.78(a)(8). The correct reference is § 80.78(a)(7).
§ 80.78(a)(3)	Deletes the prohibition against manufacturing and selling or distributing, or offering for sale or distribution, dispensing, supplying, or offering for supply, storing, transporting or causing the transportation of gasoline represented as conventional gasoline which does not contain a gasoline marker. The current regulations do not include a requirement for a gasoline marker.
§ 80.81(c)(4)	Revises to delete this provision as it pertains to a conventional gasoline marker requirement and the regulations do not include provisions for a gasoline marker.
§ 80.101(g)(9)	Revises to delete references to the blendstock tracking and accounting requirements of § 80.102, which have been eliminated.
§ 80.410(f)(4)(ii)	Corrects an incorrect reference to § 80.65(e)(2)(iii). The correct reference is § 80.65(f)(2)(iii).
§ 80.410(r)(1)(iv)	Corrects an incorrect reference to § 80.410(f)(3)(iii). The correct reference is to § 80.410(f)(4)(iii).

III. RFG and Anti-Dumping Standards/Models

A. Effective Dates for Standard Changes Due to Survey Failures

Under § 80.41(p), when a minimum or maximum per-gallon RFG standard is changed to be more stringent as a result of a survey failure, the effective date for the new standard is ninety days after EPA announces the new standard. In the NPRM, we determined that additional time is needed because of the lag time between the date refiners and importers begin producing gasoline to a new standard and the date this gasoline displaces the earlier gasoline through the distribution system. As a result, we proposed the following effective dates on which the new standard would be required after the date EPA announces the new standard: 60 days for gasoline produced at a refinery or imported by an importer; 120 days for facilities downstream of the refinery or importer other than retail outlets and wholesale purchaser-consumers; and 150 days for retail outlets and wholesale purchaser-consumers. Under this approach, refiners and importers would have approximately two months to begin meeting the new standard, downstream parties such as terminal operators would have about two months to transition to the new standard after shipments of gasoline meeting the new standard begin, and retailers and wholesale users would have about one month to transition after terminals must begin shipping gasoline meeting the new standard. We believed the times proposed for these stages were consistent with current industry practice for transitioning to new standards, such as the transition to meet the summertime high ozone season VOC standards each spring. However, as discussed below, in response to the comments on the proposal, we now believe that a somewhat longer transition time is needed.

One commenter supported the proposal. However, two commenters said that the proposal does not allow sufficient time for parties to make the transition to a new standard following a survey failure. One of the commenters noted that prior EPA guidance allowed 90 days at the refinery gate and an additional 90 days at all downstream locations. See ''Surveys,'' RFG/Anti-dumping Questions and Answers, November 12, 1996. Another commenter said that refiners need at least 90 days to allow time to plan, renegotiate supply contracts, and make refining/distribution adjustments necessary to comply with the new standard.

We agree with the commenters that additional time may be necessary for refiners to a make the transition to the new standard in the event of a standard

change due to a survey failure. Unlike the transition to the VOC standard which occurs each year, a new standard due to a survey failure may not be anticipated in sufficient time for refiners make necessary adjustments. As a result, we are proposing that the effective dates for standard changes due to a survey failure, expressed in the number of days after the date EPA announces the new standard, be as follows: 90 days for gasoline produced at a refinery or imported by an importer; 150 days for facilities downstream of the refinery or importer other than retail outlets and wholesale purchaser-consumers; and 180 days for retail outlets and wholesale purchaser-consumers. This structure is consistent with the prior guidance issued by EPA which allowed 90 days for refiners and importers and 180 days for downstream parties, but also provides for a 30 day transition period from the terminals to the retail outlets and wholesale purchase-consumers. We believe that a 30 day period is necessary for retail outlets to turnover over their gasoline supply. Requiring a 30 day turnover period between terminals and retailers/wholesale purchaser consumers is consistent with the current provisions for transitioning to VOC controlled RFG each spring, which require terminals to meet the VOC control standard beginning on May 1 each year, and retailers and wholesale purchaser-consumers to meet the VOC control standard beginning on June 1.

B. Proper E300 Value for the Edge Target Fuel for Use in Complex Model Extrapolation

The Complex Model as described in § 80.45 includes provisions for extrapolations beyond the limits of the data upon which the model was based. The limits of the data define the ''allowable range'' which represents the range of fuel parameters within which the Complex Model equations are directly applicable, and outside of which extrapolation must be used up to the limits of the model [2]. These extrapolations take the form of intricate equations and a series of conditions for use of those equations. Among other things, the conditions associated with extrapolation direct Complex Model users to determine properties for an ''edge target fuel.'' The edge target fuel is equivalent in all respects to the target fuel, except that no fuel parameters are allowed to exceed the limits of the allowable range. In effect, the edge target fuel represents the point in the multi-dimensional fuel parameter space where extrapolation begins.

The Complex Model equation for exhaust volatile organic compounds (VOCs) contained in § 80.45(c)(1) includes a single interactive term. This term, the product of E300 and aromatics, necessitates that extrapolations involving E300 include a simultaneous evaluation of the aromatics level of the target fuel. Thus, in paragraph (c)(1)(iv)(C)(6), Complex Model users are directed to determine whether the mathematical phrase [80.32 + (−.390×ARO)] is greater or less than 94, and to set the E300 edge target fuel value accordingly. In so doing, users are determining whether the aromatics-dependent E300 extrema (i.e. curve turnover) point falls beyond the limits of the available data in the Complex Model database.

However, the language in paragraph (c)(1)(iv)(C)(6) is misleading. As currently written, the user is directed to set the E300 value of the edge target fuel at 94 vol% whenever the value of the phrase [80.32 + (0.390×ARO)] is greater than 94. The Agency's intention, however, was that this step be taken only if the E300 term is being extrapolated. In other words, if the target fuel value for E300 falls below the higher limit for E300 in the allowable range as defined in Table 6, § 80.45(c)(1)(iv), then E300 is not being extrapolated, and the E300 value of the edge target fuel should be equal to the E300 value of the target fuel.

To correct this problem, we proposed to modify the provisions in § 80.45(c)(1)(iv)(C)(*6*) and § 80.45 (c)(1)(iv)(D)(*6*) to clarify that Complex Model users should only set the E300 value of the edge target fuel equal to 94 if the target fuel value for E300 exceeds the higher limit specified in § 80.45(c)(1)(iv), Table 6.

We previously received no comments on this change. Today's rule proposes to make this change.

IV. RFG Compliance Requirements

A. Clarification of Requirements To Test RFG and RBOB

Section 80.65(e)(1) requires refiners and importers to determine the properties of each batch of RFG that is produced or imported. This determination is required for each parameter relevant to the RFG standards. We previously proposed to modify § 80.65(e)(1) to add language to clarify that this section applies to RBOB as well as to RFG. We also proposed to add a cross reference to § 80.69(a), which requires the certified properties of RBOB to be the properties of the RBOB subsequent to downstream blending with oxygenate, based on test results of a sample of the RBOB hand blended in the laboratory with the appropriate oxygenate type and amount. We believe the certification of RBOB already is implicit in § 80.65(e), and that refiners and importers have been certifying and reporting the properties of RBOB based on the analysis results of a hand blend. In addition, we proposed to clarify that testing for RVP is necessary only for RFG and RBOB that is designated as VOC controlled, because RVP test results are relevant only to VOC controlled gasoline (for non-VOC controlled gasoline, the Complex Model uses an RVP value of 8.7 psi regardless of the actual RVP value of the gasoline.) Today's rule also clarifies that the volume as well as the properties of each batch of gasoline must be determined. We received no comments on these clarifications and today's rule again proposes these clarifications.

B. Transfer of Credits

Section 80.67(h)(1)(iv) allows parties to transfer oxygen and benzene credits directly from the party who generates them to the party who uses the credits for compliance purposes. We received several inquiries with regard to whether transfers within the same company are covered under this section. We believe that a party may properly transfer legitimate credits within the company or outside of the company. As a result, we proposed to clarify that credit transfers may be either inter-company or intra-company. We received no comments on this clarification and today's rule again proposes this clarification.

C. Compliance Survey Requirements

1. Method of Computation for Averages in Survey Series

The RFG rule affords refiners the flexibility to comply with the RFG standards on a refinery annual average basis, as opposed to requiring each refinery to comply based on the quality of its gasoline sold in a particular covered area. The RFG surveys are designed to ensure that this flexibility does not result in a covered area receiving gasoline that on average differs in quality from the average gasoline quality that would occur if averaging were required separately for each covered area. The surveys are conducted by an industry association according to a statistical sampling plan approved by EPA and involve sampling

[2] The allowable range of the model is, in fact, a combination of the limits of the data and additional limitations that may be imposed by the existence of extreme, or curve turnover points.

gasoline from retail outlets. If the gasoline in an area fails to meet standards set forth in the regulations for a particular parameter, the standards for that parameter are made more stringent and the number of surveys that must be conducted in the following year is increased.

Some of the gasoline characteristics evaluated by the survey are chiefly of interest because of their role in causing or contributing to ambient ozone levels. Surveys for these parameters (e.g., VOC surveys) are passed or failed based upon the average of results from a week-long survey. Other parameters (like benzene and toxics) are of concern because of their cumulative effects over a longer period of time. Surveys for these latter characteristics are passed or failed based upon the average of a year-long series of one-week surveys. The revisions to § 80.68 proposed in today's rule relate to how the average of such a series of one-week surveys should be computed.

Under the current regulations, determining the average for each survey series [3] involves computation of a simple average [4] of parameter values from each gasoline sample across all of the samples gathered during the year (without any consideration of which week-long survey the sample was a part). If all of the individual week-long surveys had equal sample sizes, this approach to computation would yield as good a representation of the fuel supply as the timing and distribution of the week-long surveys throughout the year permitted.[5] Practical considerations involved in the design and conduct of an efficient overall survey operation, though, dictate some substantial variations in sample size among the week-long surveys. One such effect, and probably the most important one, stems from the fact that high-ozone season surveys for ozone precursors must yield a confidence interval on the mean small enough to meet the precision requirements of the regulations (§ 80.68(c)(13)(iii)) for each individual survey. Since practical considerations dictate that surveys for the various parameters be conducted concurrently (i.e., each gasoline sample is analyzed for all parameters covered by the survey program), this situation results in larger-than-necessary sample sizes in the summer for non-ozone precursor parameters. Outside the summer ozone season there is no need to maintain precision standards for each individual survey, but only for the annual series of such surveys. In the interest of efficiency, the survey manager may be expected to cut back on sample sizes during these times at the beginning and end of the calendar year. As a result, the simple average substantially over-represents summertime gasoline.

An additional reason for altering the prescribed approach to computing averages of series has to do with the weights attached to each sample to handle either lack of pre-survey information about an individual retail outlet's throughput or the situation where an outlet with unusually high throughput is located in a covered area with relatively few outlets and is consequently selected into the sample with certainty. For both situations the sample is not self-weighting and weights must be computed to properly represent the outlet's gallonage in the sample. The current approach, the simple average, requires that such weights be computed two different ways, once for the outlet's inclusion in the week-long survey for ozone-related parameters and then again for the annual average computation for non-ozone-related parameters. The latter set of weights cannot be computed until the year's data collection is complete, leaving some uncertainty up to the end of the year as to the status of survey results in areas where throughput data are not available for most outlets. This particular problem is a characteristic of the sample design approach currently being used by the industry survey organization, but that approach or some variant of it is likely to be used in any thorough attempt to meet the survey requirements in the regulations.

Both the distortion and the difficulty in computing weights, as discussed above, can be eliminated by changing the method by which the average of each survey series is computed for a given parameter in a given RFG covered area. Instead of averaging all of the measurements on individual gasoline samples in the survey series, we proposed the following: (1) That the measurements for each week-long survey in an area be averaged, regardless of the sample size, to create a set of means of week-long surveys, and then (2) that all of the resulting individual survey averages for the area be averaged, themselves, across all of the surveys in the series. This approach removes a significant source of distortion, simplifies calculations, and improves the representativeness of the number that we use to make the important decision on whether the gasoline in an area has passed or failed a survey series. We received no comments on these proposed modifications to § 80.68. Today's rule again proposes these modifications.

2. Clarification of Applicability of Survey Precision Requirements

The intent of the survey precision requirements in § 80.68(c)(13)(iii) is to ensure that errors (in either direction) in survey or survey series pass/fail determinations would be unlikely. Without these requirements survey managers would be able to trade off risk of inappropriate survey failure against survey costs, and the environment would not be protected against the increased risk of errors in the other direction resulting from insufficient sampling.

Therefore, the precision requirements should apply to the body of data that serves as the basis of each pass/fail determination. As currently written, the regulations attach the precision requirements exclusively to individual surveys without making it clear that for certain survey parameters the pass/fail determination is made against a year-long series of surveys rather than against a single survey. As a result, we proposed to clarify the regulations to attach the precision requirements to the appropriate body of data for each determination—to the individual survey where the parameters being evaluated are ozone-related and to the survey series for other parameters. We received no comments on the proposed changes to § 80.68(c)(13)(iii). Today's rule again proposes these changes.

D. Product Transfer Documentation (PTD)

1. Identification of the Gasoline

In the NPRM, we proposed to add a reference to RBOB in § 80.77(c) (requiring the volume of gasoline to be included on PTDs) to clarify that this PTD requirement applies to RBOB as well as to gasoline. We also proposed to delete the reference to conventional gasoline in § 80.77(f) (requiring title or custody PTDs to include identification of the gasoline as conventional or reformulated), since the requirements of § 80.77 do not apply to conventional gasoline (there are separate PTD requirements that apply to conventional gasoline in § 80.106), and we proposed

[3] Section 80.68(c)(9)(i)(B) for toxics; (c)(10)(ii) for NO_X; (c)(11) for benzene; and (c)(12) for oxygen.

[4] In the case of toxics, the computation introduces weights for the season (high-ozone season or outside of high-ozone season) since the statistical model used to compute the emissions is different in the two seasons. The weights substantially correct the overemphasis on summer that affects other non-ozone-related parameters, as discussed in the remainder of the text.

[5] While the design for each of the individual week-long surveys is probabilistic, a variety of considerations prevent EPA from distributing the surveys in a perfectly random manner with respect to time. The overall sampling approach for survey series thus departs, to some extent, from a purely probabilistic design.

to add a reference to RBOB in § 80.77(f) since the requirements of § 80.77 do apply to RBOB. In addition, we proposed to delete the reference to RBOB in § 80.77(g)(3), since this section requires parties to identify whether the product contains ethanol, and RBOB, by definition, does not contain oxygenate. We received no comments on these changes and today's rule again proposes these changes. In addition, today's rule proposes to revise § 80.77(i) (listing the PTD requirements for RBOB) to remove the requirement in paragraph (i)(1) to identify RBOB as such on PTDs, since this requirement is now included in § 80.77(f), as indicated above.

2. Elimination of PTD Requirements To Include Registration Numbers

Sections 80.77(j) and 80.106(a)(1)(vi) require, in the case of transferors and transferees who are refiners, importers or oxygenate blenders, that the EPA assigned registration number of those persons be included on the PTDs for RFG and conventional gasoline, respectively. We believe that this requirement may be overly burdensome, particularly downstream of the refiner, importer or oxygenate blender, since such information may not be readily available. We also believe that other information which could identify the refiner, importer or oxygenate blender is likely to be available. As a result, we believe that this requirement has limited value as a means of identifying and tracking the gasoline, and that we will be able to adequately enforce the regulations without this requirement. As a result, we proposed to eliminate the requirement to include registration numbers on PTDs. We previously issued guidance indicating that EPA will not require compliance with this requirement. See Reformulated Gasoline and Anti-dumping Questions and Answers (February 21, 1995).

We received favorable comments on the proposal to delete the requirement to include EPA registration numbers on PTDs. Today's rule again proposes this change. Based on the same rationale for eliminating this requirement discussed above, we are also proposing to eliminate this same requirement under § 80.81(g)(1)(vii) regarding California gasoline produced at a refinery located outside the State of California.

E. Exemption for Gasoline Used for Aviation and Racing Purposes

Section 211(k)(5) of the CAA prohibits the sale or dispensing by any person of conventional gasoline to ultimate consumers in any covered area. This statutory prohibition on the sale or dispensing of conventional gasoline in RFG covered areas is not restricted to gasoline used to fuel motor vehicles, but rather applies to *all* gasoline sold or dispensed within an RFG covered area to *any* consumer, regardless of the use. The prohibition, therefore, includes gasoline sold or dispensed for uses such as in motor vehicles, boats, construction equipment, recreational vehicles, and lawn and garden equipment.

We proposed that persons may be exempted from the prohibitions at § 80.78(a)(1) against distributing, transporting, storing, selling or dispensing aviation and racing gasoline if they clearly identify the gasoline as gasoline not for use in RFG areas. We proposed that the racing vehicle exemption would apply only in the case of vehicles that are used exclusively as racing vehicles in races that are sanctioned by generally recognized race sanctioning bodies.[6] In addition, the exception would apply only in the case of vehicles that do not meet the definition of ''motor vehicle'' under Clean Air Act § 216(2) and § 85.1703[7] and that are not registered or licensed for use on or operated on public roads or highways. The racing vehicle exemption applies to use of racing vehicles during practice and qualifying for, and competition in sanctioned races, and applies to motorcycles and boats used exclusively in sanctioned races.

The exemption for aviation gasoline used to fuel aircraft was proposed for safety considerations. Aviation gasoline must satisfy performance criteria that are relevant to the safe operation of aircraft, and this safety consideration outweighs the very limited potential for adverse environmental effects from conventional gasoline used in this manner. The exemption for racing gasoline is based on the special performance requirements for true race vehicles and the limited volumes of gasoline involved. We believe that the environmental impact from these exemptions is minimal, and the burden from refusing these exemptions is potentially significant. As a result, we believe the exemptions are warranted under these limited circumstances. See *Alabama Power Company* v. *Costle*, 636 F.2d 323, 357 (D.C. Cir. 1979). We have allowed these exemptions under guidance previously issued by the Agency. See Reformulated Gasoline and Anti-dumping Questions and Answers (January 17, 1995).

We received no comments on the proposal to exempt racing vehicle and aviation gasoline. These provisions are contained in § 80.78(a)(12). Today's rule again proposes these provisions.

F. References to Renewable Oxygenate Requirements

On August 2, 1994, we published regulations that would have required the use of ''renewable'' oxygenates to meet a portion of the oxygenate standard for RFG. See 59 FR 39290 (August 2, 1994). However, implementation of the renewable oxygenate requirements was stayed effective September 13, 1994, as a result of a legal challenge filed in the United States Court of Appeals for the DC Circuit. 59 FR 60715 (November 28, 1994). The Court of Appeals ultimately held that the renewable oxygenate requirements for RFG are invalid. See *American Petroleum Institute* v. *EPA*, 52 F.3rd 1113 (D.C. Cir. 1995).

In the NPRM, we proposed revisions to the RFG regulations to remove the language relating to the renewable fuels requirement. These revisions, and other references to renewable fuels, are shown in the following table. Today's rule again proposes these revisions.

§ 80.65(d)(2)(vi) (C) through (E)	Paragraphs are deleted because they apply only to renewable oxygenate requirements.
§ 80.81	References to renewable oxygenate requirements at § 80.83 are deleted in paragraphs (c)(2), (c)(5), (c)(6), and (c)(10).
§ 80.83	Current section is deleted because it applies only to renewable oxygenate requirements. A new section 80.83 is being added which provides procedures for handling gasoline treated as blendstock.
§ 80.128(e)(2)	Paragraph is revised to delete language that applies only to renewable oxygenate requirements.

[6] Examples of generally recognized race sanctioning bodies include the National Association for Stock Car Auto Racing, the Sports Car Club of America, the National Hot Rod Association, the American Motorcyclist Association, and the American Power Boat Association.

[7] Under § 85.1703 a vehicle is a ''motor vehicle'' if it is self propelled and capable of transporting a person or materials, unless the vehicle meets one or more of the following criteria: (1) A maximum speed of not more than 25 miles per hour; (2) the absence of features customary for street use, such as a reverse gear, a differential, and required safety features; or (3) the presence of features that render the vehicle highly unsuitable for street use, such as tracks.

§ 80.128(e)(6)	Paragraph is deleted because it applies only to renewable oxygenate requirements.
§ 80.129(a)	Paragraph is revised to delete language that applies only to renewable oxygenate requirements.
§ 80.129(d)(3)(iii)	Paragraph is deleted because it applies only to renewable oxygenate requirements.

G. Butane Blending

Under the RFG and conventional gasoline regulations, the addition of blendstock, including butane, to RFG or RBOB or conventional gasoline constitutes the production of gasoline. As a result, a butane blender is considered to be a refiner, subject to all standards and requirements that apply to refiners under the regulations. These requirements include meeting the standards applicable to RFG and conventional gasoline, sampling and testing each batch of gasoline produced, recordkeeping, and reporting.

Butane is a blendstock that historically has been blended with gasoline, particularly in the wintertime. Butane usually is not blended with gasoline that will be used during the summertime because the increased volatility of gasoline blended with butane could violate the Federal or State volatility standards that apply during that period.

We believe that the requirement that refiners sample and test each batch of gasoline produced is a significant impediment to blending butane. This sampling and testing requirement interferes with butane blending because butane typically arrives at blend terminals and is blended in relatively small quantities. Under the current regulations, a butane blending operation may be required to sample at a frequency that could be restrictive for some parties. As a result, we proposed to allow butane to be blended with conventional gasoline under an alternative sampling and testing option in which compliance would be based on the butane specifications provided by the butane supplier, subject to certain conditions specified in the proposal.

1. Butane Blending With Conventional Gasoline

In the NPRM, we proposed that a butane blender who has documentation from the butane supplier indicating that the butane is of commercial grade (as defined in the regulations) may include the butane in anti-dumping compliance calculations based on the properties specified in the regulations for commercial grade butane. A butane blender that has documentation from the butane supplier indicating that the butane is of non-commercial grade (as defined in the regulations) may include the butane in compliance calculations based on the properties specified in the regulations for non-commercial grade butane, provided that the butane blender conducts a quality assurance program of sampling and testing to ensure that the butane has the properties specified in the regulations. A party that blends butane into gasoline under this alternative sampling and testing option would continue to be classified as a refiner and would be subject to all other refiner requirements.

When butane is blended into conventional gasoline outside the high ozone season, we believe there is little adverse environmental impact as a result of this sampling and testing option, as long as the butane is of sufficient purity. As a result, we proposed that this alternative sampling and testing option for butane blended with conventional gasoline apply during the period outside the high ozone control period (May 1 through September 15). We have allowed butane to be blended with conventional gasoline in a manner that is consistent with this approach in guidance included in Reformulated Gasoline and Anti-dumping Questions and Answers (October 3, 1994). Our experience has been that this approach facilitates butane blending, and that certification mechanisms are appropriate.

Although we proposed to allow use of this sampling and testing option for the entire period outside the high ozone control period, we requested comment on whether this sampling and testing option also should not apply during the ''shoulder periods'' immediately preceding and following the ozone control period. Most of the commenters recommended that the proposed flexibility not be disallowed during the shoulder periods. Some commenters indicated that the use of butane to allow optimum control of RVP levels in the shoulder periods would improve performance during these periods. One commenter believed there would be no adverse environmental effect from blending butane with conventional gasoline during the shoulder periods because blending low RVP gasoline with butane is limited by other gasoline specs (e.g., distillation), and because the shoulder periods have lower RVP gasoline from the high ozone period. One commenter, however, believed that butane blending could have a detrimental effect on the environment during the shoulder periods, since refiners start producing low vapor pressure gasoline well below the summer limit to change over the distribution system by the required dates, and adding butane to the low RVP gasoline in the spring would increase VOCs and slow the system changeover. In the fall, butane blending would effect a more instantaneous increase to the maximum RVP limit, increasing VOCs in this season.

The anti-dumping requirements for conventional gasoline were included in the RFG rule to ensure that overall emissions of exhaust toxics and NO_X will not increase over 1990 exhaust toxics and NO_X emissions. After consideration of all the comments received and upon further analysis by EPA, we believe that, although gasoline blended with butane during the shoulder periods may have a somewhat higher RVP than non-butane blended gasoline, blending butane into conventional gasoline is unlikely to degrade the overall conventional gasoline pool from 1990 gasoline to any significant degree, since butane blending is likely to reduce winter complex model exhaust toxics and NO_X emissions. See ''Butane Blending Technical Analysis,'' Memo to Docket. As a result, today's action again proposes the provisions for blending butane into conventional gasoline as previously proposed, and as currently allowed under the Question and Answer guidance, with no further limitations with regard to the time period in which the flexibility is allowed.[8]

One commenter indicated that, under certain circumstances, a refinery may wish to blend butane into conventional gasoline during the high ozone season, and that this practice should be allowed. The provisions for blending butane into conventional gasoline in today's rule would not prohibit a refiner from blending butane into conventional gasoline during the high ozone season. Butane blending into conventional gasoline may occur during the high ozone season, however, the butane blender must demonstrate, through sampling and testing, that the gasoline blended with the butane meets the volatility standards specified at § 80.27. This would necessitate sampling and

[8] Note that today's rule regarding the sampling and testing requirements for butane blenders under the RFG and anti-dumping rule does not in any way alter or modify the sampling and testing requirements contained in 40 CFR 80.340 regarding butane blending into gasoline under the gasoline sulfur rule in Subpart H.

testing each batch of the blended gasoline for RVP using the regulatory test method in § 80.46.

One commenter said the frequency of quality assurance sampling and testing for non-commercial grade butane should be one sample for every 500,000 gallons or every three months, whichever is more frequent, instead of one sample for every 50,000 gallons or every three months, as proposed. The commenter indicated this would be consistent with the existing Question and Answer guidance. The guidance requires the frequency of quality control sampling and testing to be one sample for every 65 truckloads or every 17 rail cars of butane, or every three months, whichever is more frequent. EPA estimates that the average truckload contains approximately 8,000 gallons of butane. Under the existing guidance, 65 truckloads would be approximately 500,000 gallons. Therefore, we agree with the commenter and believe that the proposed requirement to sample for every 50,000 gallons was in error. As a result, today's rule would require quality assurance sampling and testing for every 500,000 gallons of butane received, or every three months, whichever is more frequent.

One commenter opposed the additional flexibility for butane blending which allows compliance with the gasoline standards on the basis of the butane specifications provided by the butane supplier with no further obligation to sample and test the finished product. This commenter believes that, in the case of a violation downstream, it would not be known whether the batch was off-spec as received by the butane blender, or whether the butane blender added something other than butane which caused the violation. Although the commenter raises a valid concern, we believe that violations of this nature will be rare, and that the approach in today's action today is adequate to address such violations. First, the annual average exhaust toxics and NO_X emissions performance standards for conventional gasoline are met by the refiner. As discussed above, we believe that adding butane of the purity required by the regulations downstream from the refiner will not result in an increase of the exhaust toxics or NO_X emissions performance of the gasoline. Under the regulations, the butane blender must have documentation of the purity of the butane added, and conduct quality assurance sampling and testing when blending butane that is not of commercial grade. Second, the only downstream standard for conventional gasoline is the summertime RVP standard. Although butane blending may raise the RVP of the gasoline, under the regulations, a party that blends butane into conventional gasoline during the high ozone season is required to test for RVP to ensure compliance with the RVP standard. In addition, under the current regulations, parties upstream from the facility at which a violation is detected are presumed liable (as well as the facility where the violation was detected). To successfully defend against a presumption of liability, a party must demonstrate that the violation was not caused by him (or his employee or agent). Such demonstration must include a reasonably specific showing, by direct or circumstantial evidence, that the violation was caused or must have been caused by another party. See § 80.79(b). Therefore, for violations found downstream from the butane blender, the butane blender would likely be required to demonstrate that another party contaminated the gasoline after it left the butane blending facility.

One commenter recommended that the proposed properties for ''non-commercial'' grade butane be changed to reflect the conventional gasoline baseline values. As discussed above, the rule provides that a refiner that blends butane for which the refiner has documents from the butane supplier demonstrating that the butane has the properties for non-commercial grade butane may demonstrate compliance based on these properties provided that the refiner conducts a quality assurance sampling and testing program of the butane. We believe that butane must at least be of the quality reflected in the rule for non-commercial grade butane for EPA to be assured, in the absence of every-batch testing, that the butane blending will not result in any environmental degradation.

One commenter suggested that EPA consider not requiring butane blenders to run the Complex Model equations for each batch of butane blended. The provisions for butane blenders contain maximum values for olefins, aromatics, benzene and sulfur for commercial and non-commercial grade butane. In the NPRM, we proposed that butane blender-refiners use these values in compliance calculations. We believe, however, that the Complex Model normally will yield results that are in compliance using the maximum parameter values prescribed in the rule. As a result, today's rule would require batch reporting of the volume and properties of the butane, but does not require parties to calculate emissions using the Complex Model for each batch of butane blended with conventional gasoline. However, if a refiner wishes to include butane blended with conventional gasoline in the annual average compliance calculations for the refinery, the refiner would be required to calculate the equivalent emissions performance of the butane using the provisions in § 80.101(g)(3). Given the difficulty associated with testing butane, and recognizing that the parameter values prescribed in the rule provide a worst case scenario, the rule also would provide that the parameter values specified in the rule may be used in calculating the equivalent emissions performance under § 80.101(g)(3). A refiner who chooses to include the butane in annual average compliance calculations would be required to include all butane blended during the annual averaging period in compliance calculations.

2. Butane Blending With RFG

In the proposal, we requested comment on whether EPA should allow this sampling and testing option for butane blended with RFG. Several commenters said that butane blending would improve the performance of RFG. One commenter recommended that the sampling and testing flexibility be extended to butane blending with RFG, but be limited to certain periods of the year and certain areas of the country.

At the time the provisions for butane blending were proposed, we were unable to establish with any reasonable degree of certainty whether adding butane to RFG would result in any increase in emissions of toxics or NO_X emissions. Because of the additional level of environmental concern associated with RFG, we believed that the flexibility to demonstrate compliance based on butane specifications provided by the butane supplier rather than on sampling and testing each butane blend should not be extended to RFG in the absence of data indicating that there would be no increase in these emissions. However, based on our recent analysis, we have concluded that, although the increase in RVP associated with butane blending may cause some increase in NO_X emissions, any negative effect on emissions is not likely to be significant enough to cause the gasoline to be in noncompliance with the wintertime RFG emissions standards. See ''Butane Blending Technical Analysis,'' Memo to Docket. As a result, today's action would allow butane to be blended into RFG in the wintertime under the provisions in the rule. The sampling and testing provisions for blending

butane into conventional gasoline and RFG are contained in new § 80.82.[9]

Today's rule does not propose to allow use of this sampling and testing option for blending butane into RFG during the high ozone control period or during the shoulder periods immediately preceding and immediately following the high ozone control period. The increase in RVP associated with butane blending causes an increase of VOC emissions. As a result, blending butane into gasoline that is sold during the ozone control period or during some period prior to the beginning of the control period may cause the gasoline to be in noncompliance with the VOC minimum standard. As discussed above, the RVP increase associated with butane blending may also result in some increase in NO_X emissions. Both VOC and NO_X emissions contribute to higher ozone levels. When the RFG rule was promulgated, it was anticipated there would be ozone benefits during the shoulder periods, as well as during the ozone control period, as a result of the turnover to and from VOC controlled gasoline at the beginning and end of the ozone control period.[10] In many RFG areas, and particularly in areas with warmer climates, ozone may be of some concern during these shoulder periods. Blending butane into RFG could compromise the ozone benefits derived from having lower RVP gasoline in the distribution system before and after the ozone control period. As a result, today's rule would provide that the sampling and testing option for parties who blend butane into RFG applies only to the period October 1 through March 31.

For the reasons discussed above regarding butane blended with conventional gasoline, today's rule does not propose to require parties that blend butane with RFG or RBOB in accordance with the provisions of § 80.82 to calculate emissions using the Complex Model. However, refiners who wish to include gasoline batches produced by blending butane with RFG or RBOB in annual averaging compliance calculations would need to determine compliance with the RFG standards using the Complex Model. As discussed above, today's rule would provide that the equivalent emissions performance of butane blended with conventional gasoline may be determined using the provisions in § 80.101(g)(3). The provisions in § 80.101(g)(3), however, apply specifically to blendstock blended with conventional gasoline, and are not applicable to blendstock blended with RFG or RBOB. As a result, today's rule proposes to provide that, where butane is blended with RFG or RBOB, and where the refiner wishes to include the butane in annual average compliance calculations, the relaxed sampling and testing approach under § 80.82 may not be used. The emissions performance of gasoline produced by blending butane with RFG or RBOB may be calculated in accordance with the provisions for using previously certified gasoline in § 80.65(i). Although this requires sampling and testing of the previously certified gasoline and the gasoline subsequent to blending the butane, we believe it is necessary to ensure that the integrity of the RFG program will not be compromised where butane is included in a refinery's annual average compliance calculations for RFG or RBOB. A refiner who chooses to include butane blended with RFG or RBOB in annual average compliance calculations would be required to include all butane blended during the annual averaging period in compliance calculations.

Today's rule also proposes to add specific recordkeeping and reporting provisions for refiners who blend butane with RFG or RBOB or conventional gasoline. These provisions represent modest changes to the recordkeeping and reporting requirements for butane blenders. They require retention of documents and reporting of information necessary to verify that the requirements of § 80.82 have been met.

H. Gasoline Treated as Blendstock (GTAB)

Today's rule includes provisions for treating imported gasoline as a blendstock under the RFG rule. These provisions would allow an importer to conduct remedial blending of off-spec imported gasoline. Under the provisions of today's rule, the volume and properties of the imported product, called gasoline treated as blendstock, or GTAB, would not be included in the party's importer compliance calculations, but instead would be included in the party's refinery compliance calculations for the finished product.

Under the RFG and anti-dumping regulations, if imported gasoline is blended with additional blendstock, the blending constitutes a refinery operation for which all refiner RFG/anti-dumping requirements must be met, including compliance with refinery standards, batch sampling and testing, independent sampling and testing (for RFG), recordkeeping, reporting, and attest engagements. The RFG or anti-dumping standards for such an operation must be met solely on the basis of the blendstocks used, and the imported gasoline which was previously accounted for by the importer may not be included. This is true regardless of whether the blending-refining is conducted by the original importer of the gasoline or by another party. As a result, under the current regulations, it is difficult for importers to conduct remedial blending of imported gasoline that does not meet specifications (i.e, is ''off-spec'') prior to certification as RFG or conventional gasoline.

In the case of RFG, for example, the importer cannot import off-spec RFG and then add blendstocks to meet RFG specifications, and the gasoline cannot be imported as conventional and converted to RFG after remedial blending. The importer, therefore, must downgrade off-spec RFG to conventional gasoline, which can have significant financial consequences to the importer. A refiner who produces a batch of RFG or conventional gasoline that is off-spec prior to the gasoline leaving the refinery or being fungibly mixed at the refinery, on the other hand, can delay designating the gasoline as a batch of RFG, reblend the batch to correct the off-spec condition, and designate the reblended gasoline as a batch for refinery compliance calculations.

To correct this situation, we proposed provisions which would allow importers to conduct remedial blending of off-spec imported gasoline by treating the imported conventional gasoline or RFG as blendstock. This allowance would be subject to certain requirements and limitations. For example, to prevent the marketing of gasoline that has not been certified, the proposal prohibits GTAB to be sold or transferred by the importer to another company prior to the completion of remedial blending. The company that imports the gasoline and classifies it as GTAB in its importer capacity also must conduct the remedial blending and report the blended gasoline in its refiner capacity. We believe that without this constraint gasoline could be lost in the fungible distribution system without ever having been certified.

In addition, for conventional gasoline standards, which are based on a company's individual baseline, we

[9] Section 80.82 is currently reserved under the heading ''Conventional gasoline marker.'' At the time the RFG final rule was promulgated, we elected not to include provisions for a conventional gasoline marker requirement, but reserved this section in order to include such provisions at a later date. See 59 FR at 7775 (February 16, 1994). Since we have no current plans to promulgate a requirement for a conventional gasoline marker, we are using this section to include the provisions relating to butane blending.

[10] See 56 FR 31282–3 (August 19, 1987).

proposed to require the company each year to calculate an adjusted refinery compliance baseline for the refinery where the GTAB is used to produce gasoline. This adjusted compliance baseline would be calculated separately each calendar year averaging period in which GTAB is used to produce gasoline, and consist of the volume-weighted combination of the company's importer baseline at the GTAB volume for the year, and the refinery's individual baseline at the refinery's gasoline volume exclusive of GTAB for the year. This requirement is intended to prevent a company with an individual refinery baseline that is less stringent than the company's importer baseline from using the GTAB option as a way to apply the less stringent refinery baseline to imported gasoline.

EPA has allowed use of this GTAB option under guidance included in Reformulated Gasoline and Anti-Dumping Questions and Answers (February 6, 1995). We believe this guidance has been effective in providing importers with flexibility to correct off-spec imported gasoline, and that the conditions and limitations have been effective in preventing compliance difficulties.

We received several favorable comments on the proposal for GTAB. One commenter, however, recommended that EPA eliminate a proposed provision which would prohibit GTAB from being placed in a storage tank containing other gasoline unless the gasoline in the storage tank has the same designations under § 80.65(d) as the gasoline to be produced using the GTAB. The commenter believes that this prohibition was intended to prevent an importer from using conventional gasoline in the production of RFG and from reclassifying RFG with regard to VOC control in violation of § 80.78(a)(1). The commenter believes that this prohibition should be eliminated in light of the greater flexibility given to refiners for using previously certified gasoline (PCG).

The PCG provisions referred to in the comment were proposed finalized on December 28, 2001. 66 FR 67098. These provisions allow a refiner to use PCG in the production of a new batch of gasoline by entering the PCG batch in the refinery's compliance calculations as a negative batch in the category of its original designation. We do not believe that the GTAB provisions are in conflict with the provisions for using PCG. GTAB itself is not considered to be PCG, since it was not previously certified by the importer and included in the importer's compliance calculations. Instead, as discussed above, the GTAB is treated as a blendstock. In some cases, the PCG provisions may be used in the same blending operation that uses the GTAB approach. In such cases, the importer/refiner would determine the volume and properties of the GTAB and report the GTAB batch in its importer report to EPA, but would not include the volume and properties of the GTAB in its importer compliance calculations. The GTAB could then be put into a storage tank with PCG of a different designation, assuming the volume, properties and designation of the PCG were determined before the products were commingled. The importer/refiner could then blend the GTAB and PCG, with or without other blendstock, to produce a new batch. The PCG volume and properties would be entered as a negative batch in the refinery's compliance calculations in the category of the PCG batch's original designation. The entire batch would then be sampled and tested and included in the refinery's compliance calculations (using the appropriate GTAB equation). Today's action includes language to clarify that the PCG provisions and the GTAB provisions may be used in the same blending operation. However, where the PCG procedures are not used, GTAB may not be placed in a storage tank containing other gasoline unless the other gasoline has the same designations under § 80.65(d).

The commenter also recommended that § 80.83(e) be rewritten to clarify that the provisions for determining an adjusted baseline do not apply to GTAB used to produce RFG after January 1, 1998, since there are no RFG standards based on individual baselines after that date. We agree with the commenter and today's action would change the regulatory language to clarify that the provisions for determining an adjusted baseline do not apply to GTAB used to produce RFG after January 1, 1998.

One commenter recommended that EPA clarify whether importers are required to use their independent lab for GTAB imports, and whether the reports of GTAB should be sent on an annual basis.

We believe the regulations as proposed are clear with regard to both the independent lab requirement and the reporting requirements. Section 80.83(f)(1) requires independent lab sampling and testing for GTAB used to produce RFG. Section 80.83(f)(3) requires any GTAB that is used to produce RFG to be treated as imported RFG for purposes of sampling and testing, which would include the independent lab requirement.

We previously proposed to add provisions to the recordkeeping and reporting requirements for RFG regarding GTAB. These provisions would require refiners and importers to keep records that reflect the physical movement of the GTAB from the point of importation to the point of blending to produce RFG, and require GTAB to be identified as such on quarterly RFG reports. We also proposed similar recordkeeping requirements for GTAB under the anti-dumping regulations for conventional gasoline. We received no negative comments on these provisions and they are again being proposed. The previous proposal, however, did not include a requirement that parties identify GTAB batches on their anti-dumping annual reports. Today's action proposes to include this requirement, which we believe is a logical outgrowth of the previous proposal.

One commenter pointed out that the GTAB provisions as proposed fail to define certain terms in the equations. Today's rule would correct this oversight by including definitions for all terms in the equations.

Today's rule also again proposes the definition of GTAB which was previously proposed. The definition is at § 80.2(f).

Finally, today's rule would add a new § 80.211 to allow the GTAB provisions to be used for purposes of compliance with the gasoline sulfur requirements in Subpart H. The rationale for allowing use of the GTAB provisions under the RFG/anti-dumping regulations also applies to use of the GTAB provisions under the gasoline sulfur regulations. We believe that application of the GTAB provisions to the gasoline sulfur regulations would provide consistency in the fuels regulations regarding the way off-spec imported gasoline may be treated. We believe that this provision is a logical outgrowth of the proposal for use of GTAB under the RFG/anti-dumping regulations.

V. Anti-dumping Requirements

A. Imports of Gasoline by Truck

The requirements that apply to imported gasoline under §§ 80.65 (b) and (c), and 80.101(d) and (i), apply to each batch of imported gasoline regardless of the mode of transportation. These requirements include batch sampling and testing, independent sampling and testing for RFG, record keeping, reporting and attest engagements. Therefore, an importer who imports gasoline into the United States by truck is required to meet these requirements, including sampling and testing for each batch of gasoline. For a

truck importer, a batch could consist of the gasoline contained in the truck if homogeneous, or in each truck compartment if the truck's gasoline is not homogeneous.

We believe that the every-batch requirements may be difficult to meet when gasoline is imported by truck, because of the relatively small batch volumes involved. As a result, we proposed a limited alternative method by which importers could meet the requirements for conventional gasoline that is imported into the United States by truck. This approach is limited to imported conventional gasoline, and does not apply in the case of imported RFG because of the additional level of environmental concern associated with RFG.

The proposed approach was based on the importer meeting the conventional gasoline standards on a per-gallon basis, rather than the current regulatory approach of meeting conventional gasoline standards on average. Per-gallon compliance was proposed so that the importer would not have to sample and test each truck load of imported gasoline, which we believed would be necessary for demonstrating compliance with a standard on average. Under the proposal, the importer instead would be allowed to rely on sampling and testing conducted by the operator of the truck loading terminal to verify that the gasoline meets all conventional gasoline standards that apply to the importer.

Because the terminal operator in most cases would not be subject to United States laws, the proposal contained safeguards intended to ensure that the gasoline in fact meets the applicable standards. Under the proposal, the importer would be required to conduct an independent program of quality assurance sampling and testing of the gasoline dispensed to the importer. This sampling and testing would be at a rate specified in the proposal, and the sampling would be unannounced to the terminal operator. In addition, EPA inspectors would be given access to conduct inspections at the truck loading terminal and at any laboratory where samples collected pursuant to this approach are analyzed.

We have allowed conventional gasoline to be imported by truck in a manner that is consistent with the approach proposed in the NPRM under guidance include in Reformulated Gasoline and Anti-dumping Questions and Answers, August 29, 1994. Our experience has been that this approach facilitates imports of conventional gasoline by truck, and that the sampling and testing requirements are appropriate enforcement safeguards. As a result, today's rule again proposes the provisions for imports of gasoline by truck as previously proposed, except for the addition of certain provisions as discussed below. The provisions are contained in § 80.101(i)(3).

Two issues regarding this sampling and testing approach for truck importers have arisen since the publication of the NPRM. The first issue involves whether truck importers would be able to meet the Complex Model exhaust toxics and NO_X emissions standards on a per-gallon basis. The Complex Model, which was required to be used for demonstrating compliance with the emissions standards beginning on January 1, 1998, calculates higher emissions for gasoline used in the winter due to the extra emissions that result from cold engine start-up, as compared to emissions calculated for gasoline used in the summer. The annual average exhaust toxics and NO_X standards were established by combining higher winter emissions with relatively lower summer emissions. Importers, therefore, are able to meet conventional gasoline standards on average by offsetting the higher emissions of winter gasoline with the lower emissions of summer gasoline. The issue for truck importers under the current guidance and NPRM, which require compliance on a per-gallon basis, is that gasoline produced during the winter may not meet the emissions standards on a per gallon basis. As a result, we modified the August 29, 1994 guidance, which allows truck importers to fulfill the sampling and testing requirements based on test results from the truck loading terminal, to also allow truck importers of conventional gasoline to comply with the conventional gasoline standards on an annual average basis. See Letter to Gregory M. Scott, Society of Independent Gasoline Marketers of America, from Steven A. Herman, dated January 2, 1998.

Our experience since 1998 has indicated that, under this approach, the quality of gasoline imported by truck meets the anti-dumping standards without environmental detriment, and that this approach is necessary for truck importers to comply with the Complex Model standards. As a result, today's action proposes to include a provision in § 80.101(i)(3) which would allow truck importers of conventional gasoline who use the modified sampling and testing approach to comply with the conventional gasoline standards on an annual average basis.

The second issue involves the requirement that truck importers who rely on test results from the foreign terminal must conduct quality assurance sampling and testing to verify the terminal's testing. Under the guidance and NPRM, the quality assurance testing may be conducted by either the importer or an independent laboratory. In some instances, however, every-batch sampling and testing is conducted at the terminal by an independent laboratory. In these situations, i.e., where an independent laboratory samples and tests each batch of gasoline at the truck-loading terminal supplying the importer's trucks, we believe that additional quality assurance sampling and testing by the importer or independent laboratory is redundant. As a result, we believe that a truck importer may satisfy the sampling and testing requirements, including the quality assurance requirement, using results from sampling and testing conducted by an independent laboratory at the truck-loading terminal, provided that the sampling and testing is conducted subsequent to each receipt of gasoline into the storage tank supplying the importer's truck, or immediately prior to each transfer of gasoline into the importer's truck. See Letter to Kevin J. Kyle, Pal Energy Corporation, from Charles N. Freed, dated April 23, 1998. Today's rule proposes to include provisions in § 80.101(i)(3) to clarify this approach.

We received comments on the original proposal for truck importers from three parties. One commenter said that the quality assurance requirement is particularly difficult for small importer companies and that such companies should be exempt from the quality assurance sampling and testing so long as independent laboratory tests are being performed by other larger import companies and the gasoline is pulled from the same terminal and the same tankage. While we do not believe that an exemption from the quality assurance sampling and testing is warranted, we believe that the provisions in today's rule would not prohibit a smaller truck importer from entering into an arrangement with a larger importer to use tests results obtained from an independent laboratory that conducts sampling and testing on the same terminal tankage for the larger importer.

Two commenters recommended that EPA expand the provisions for truck importers to include rail tank cars. We proposed these provisions specifically for truck importers based on information we had received regarding the particular difficulties that truck importers have conducting every batch sampling and testing due to the small batch sizes transported in tank truck compartments. We believe that every batch sampling and testing does not

impose similar burdens on importers who import gasoline by rail tank cars and the NPRM did not seek notice and comment on these provisions being applied to such importers. As a result, today's rule does not propose to extend the provisions for tank truck importers to importers who import gasoline by rail.

B. Date for Submission of Attest Engagement Reports

Section 80.105(c) requires that attest engagement reports involving conventional gasoline must be submitted by May 30 each year. However, § 80.75(m) requires that attest engagement reports for RFG must be submitted by May 31 each year. This inconsistency in reporting deadlines was inadvertent when these sections were promulgated, and, as a result, we proposed to conform the dates by adopting May 31 as the deadline for submitting conventional gasoline attest reports. We received no comments on this change and it is again being proposed.

VI. Attest Engagements

Under §§ 80.65(h), 80.75(m), and 80.105(c) refiners and importers, and reformulated gasoline oxygenate blenders who achieve compliance on average, are required to commission an audit each year to review compliance with certain requirements of the reformulated gasoline and anti-dumping regulations. The audit requirements are specified in 40 CFR Part 80, Subpart F. Under these regulations, the auditor evaluates compliance with the specified requirements by completing audit procedures, called ''agreed upon procedures,'' that are included in the regulations for each requirement; i.e., the auditor ''attests'' to the results of the agreed upon procedures. As a result, the overall audit is called an ''attest engagement.''

In the NPRM, we proposed a number of changes to the attest engagement requirements. Certain of these proposed changes are included in today's rule and are discussed below.

A. Modification To Agree Upon Procedures in §§ 80.128 and 80.129, and Promulgation of Agreed Upon Procedures in §§ 80.133 and 80.134

First, today's rule would amend the attest provisions in Subpart F to include new attest procedures. The agreed upon procedures for refiners and importers currently are specified in § 80.128, and for oxygenate blenders in § 80.129. Since promulgation of these procedures, we received comments from industry, and from auditors who conducted attest engagements under this program, that the agreed upon procedures in §§ 80.128 and 80.129 should be modified in order to be more efficient. A group of auditors working in this area convened under the auspices of the American Institute of Certified Public Accountants (AICPA) to develop new attest procedures. This group submitted modified attest procedures to EPA in January 1996, and asked EPA to approve these procedures for use. On March 15, 1996, by letter to Ian A. MacKay, AICPA, EPA approved use of the attest procedures AICPA submitted, with certain modifications, under the authority of § 80.128. In the NPRM, EPA proposed to amend the attest provisions in Subpart F to include these modified attest procedures. Today's rule re-proposes these procedures. The modified attest procedures for refiners and importers are contained in § 80.133. The modified attest procedures for oxygenate blenders are contained in § 80.134.

The modified attest procedures do not differ significantly in substance from the procedures in §§ 80.128 and 80.129. The principal difference between the modified attest procedures and the procedures in §§ 80.128 and 80.129 is that the modified procedures include criteria for identifying when certain attest procedures, or categories of attest procedures, are unnecessary for a particular attest engagement. These modified attest procedures have been used successfully by numerous auditors for attest engagements since the 1995 reporting period.

The modified attest procedures submitted by AICPA included certain terms not included in the original procedures. Today's rule proposes definitions for certain of these terms which were previously proposed. These definitions do not change the substance of the original procedures.

We received several comments on the modified attest provisions. One commenter said that § 80.133 lumps importers with refiners even though the items noted in the proposed language do not always apply to importers. The commenter recommends that importer procedures be separately defined and should consider the logistical aspects of terminal operation. Another commenter indicated that the attest provisions are inappropriate in situations where an importer brings GTAB into a terminal used by other refiner/importers.

We understand that importers, including importer-refiners who blend GTAB, may use different tanks at different times, and as a result, inventory reconciliation cannot always be done in the same way it is done by crude oil refiners with fixed tanks. Therefore, we believe that the inventory reconciliation for importers, including GTAB importer-refiners, can be done with other data, such as Customs records and other commercial documents, if full inventory reconciliation is not available due to non-continuous use of tanks.

One commenter said that the results in § 80.133(h)(3) will not agree due to test variances and oxygenate purity. The commenter recommended that EPA allow the acceptable ranges at § 80.65(e) for this procedure and also to fulfill the requirements at § 80.133(h)(4)(ii)(B). We agree with the comment and are proposing to add a provision to allow the acceptable ranges set forth in the chart at § 80.65(e).

In addition, the commenter recommended that EPA provide an acceptable range for total weight percent oxygen to fulfill the requirements under § 80.133(h)(4)(i), since an oxygenate weight percent of exactly 2.0 would not be likely due to the variables associated with the laboratory testing, ethanol purity and specific gravities. This provision, however, requires the attest auditor to compare only records relating to RBOB for which the refiner designated a specific type and amount of oxygenate to be blended by the oxygenate blender. The auditor must agree the refiner's oversight test results of the type of oxygenate used and the oxygenate content to the instructions for type and amount of oxygenate designated on the product transfer documents for the RBOB. The results must be within the acceptable range for the oxygenate given in § 80.65(e)(2)(i). This provision does not require the auditor to compare results of oxygenate weight percent testing. A range for total weight percent oxygen, therefore, is unnecessary and irrelevant to the attest requirements under § 80.133(h)(4)(i). Today's rule would modify the proposed regulatory language to clarify this requirement.

We also proposed that the original attest procedures in §§ 80.128 and 80.129 would continue to be available as alternatives to the proposed attest procedures prior to the 1998 reporting period, and that the attest procedures in §§ 80.133 and 80.134 would be required for subsequent reporting periods. We proposed to phase out the original attest procedures because we believed the modified attest procedures are superior and ultimately should be used for all attest engagements. In addition, we believed that oversight of the attest requirement, including reviews of attest reports, would be more efficient if all attest engagements were based on the same agreed upon procedures. We

proposed that during the period when both the original and the modified attest procedures are available, parties would be required to use either the original attest procedures for refiners and importers under § 80.128 in its entirety, or the modified attest procedures for refiners and importers under § 80.133 in its entirety. A party would not be allowed to use a mixture of attest procedures from § 80.128 and § 80.133. Similarly, an oxygenate blender would be required to use the attest procedures in § 80.129 or in § 80.134, and could not mix attest procedures from both sections. The reason for this constraint is that the different attest procedure sections contain different requirements that are organized differently, and, at least in part, the logic of the sections would be lost if these sections are not completed in their entirety.

We received no negative comments on the proposal to phase out the old attest procedures. We continue to believe it is appropriate to phase out the original procedures. As a result, today's rule proposes to allow use of the attest procedures at §§ 80.128 and 80.129 as alternatives to the procedures at §§ 80.133 and 80.134 through the attest for the 2005 reporting period. Beginning with the attest engagements for the 2006 reporting period, only the attest procedures at §§ 80.133 and 80.134 may be used.

Section 80.125 contains the general requirement for attest audits. Today's rule again proposes modifications to § 80.125, which would require use of the new attest procedures in §§ 80.133 and 80.134, and allow the use of §§ 80.128 and 80.129 as alternatives until 2006.

B. Attest Procedures for GTAB, Previously Certified Gasoline (PCG), Truck Importers and Butane Blenders

As discussed above, today's rule would finalize procedures by which importers may treat imported gasoline as blendstock (GTAB) (§ 80.83), modified sampling and testing procedures for importers who import conventional gasoline by truck (§ 80.101(i)(3)), and procedures for butane blenders (§ 80.101(i)(4)). As a result, we are also proposing attest procedures that would apply in the case of parties who utilize these options. These attest procedures follow the general model of the attest procedures included in §§ 80.128, 80.129, 80.133 and 80.134.[11]

One commenter said that inventory accounting records usually distinguish only between conventional gasoline and RFG, and do not distinguish between imports and domestic receipts or GTAB, unfinished gasoline, etc. As a result, these records cannot be used as an independent verification of the total import volume, total GTAB, etc. The commenter recommended that EPA allow the use of other documents to reconcile under § 80.133(a)(1). This commenter also recommended that EPA add ''or tank containing blendstock'' to § 80.131(a)(3)(iii), since the refiner/importer may discharge GTAB to a blending tank containing blendstocks. We agree with the comments and have proposed to modify § 80.131(a)(1) of the GTAB attest section to allow the use of alternative documents to agree the volumes if the yield accounting documents are not sufficient. We have also proposed to modify § 80.131(a)(3)(iii) to include the phrase ''or tank containing blendstock.'' In addition, today's rule would add a provision to the attest requirements for PCG which parallels § 80.131(a)(1), including the change discussed above. This provision, which was proposed and received no negative comments, was inadvertently omitted from attest requirements in the final PCG rule.

Today's rule also again proposes a provision in § 80.125 which reflects the requirement for GTAB attest engagements, with a modification which adds the requirement for attest engagements for truck importers, PCG and butane blenders.

VII. Public Participation

We solicited comments on the need to take the actions proposed in the July 11, 1997 NPRM, including the actions in today's proposal. We reviewed and considered all written comments on these changes to the RFG and conventional gasoline regulations. All comments received by EPA are located in the EPA Air Docket, Docket A–97–03 (See **ADDRESSES**).

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1591.16.

This proposed rule would make certain revisions to the RFG and conventional gasoline regulations which provide regulated parties with additional flexibility to comply with the regulations. Some of the revisions in today's action would lessen the information collection burdens on certain regulated parties; for example, the rule reduces the sampling and testing requirements for importers who import gasoline by truck. Most of the revisions in today's action would not result in any additional reporting or recordkeeping burdens. Some of the provisions that provide additional flexibility for regulated parties necessitate modest recordkeeping and reporting requirements.

The estimated total annual hour burden on industry for this rulemaking is approximately 1398 hours. This estimate is based on an average of 1 hour per respondent × 40 respondents for GTAB recordkeeping and reporting, 33.40 hours per respondent × 40 respondents for GTAB sampling and testing, and 1.08 hours per respondent × 20 respondents for butane blending recordkeeping and reporting. The

[11] On December 28, 2001, we finalized procedures for using previously certified gasoline (PCG), and related attest procedures for PCG. 66 FR 67098. These attest procedures currently are contained in § 80.131. Today's rule renumbers these PCG attest procedures in § 80.131 and adds the attest provisions for GTAB, truck importers and butane blenders. The substance of the attest provisions for PCG is unchanged.

estimated total annual cost burden on industry for this rulemaking is $83,860. This estimate is based on an annual cost of $60 per respondent × 40 respondents for GTAB recordkeeping and reporting, $2,004 per respondent × 40 respondents for GTAB sampling and testing, and $65 per respondent × 20 respondents for butane blending recordkeeping and reporting.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number OAR–2003–0019. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 15, 2005, a comment to OMB is best assured of having its full effect if OMB receives it by January 17, 2006. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule involves technical corrections, clarifications and codification of certain Agency guidance intended to promote successful implementation of the requirements for reformulated and conventional gasoline and does not include additional regulatory requirements on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The proposed rule would impose no enforceable duty on any State, local or tribal governments or the private sector. This rule applies only to gasoline refiners, importers, blenders and marketers.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule proposes certain technical and minor changes to the RFG rule, clarifies provisions, and codifies certain guidance previously issued by the Agency. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications as specified in Executive Order 13175. This rule applies to gasoline refiners, importers, blenders and marketers. Today's rule proposes to modify the Federal RFG and conventional gasoline requirements, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Acts That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve any new technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

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

IX. Statutory Provisions and Legal Authority

Statutory authority for today's proposed rule comes from sections 211(c) and 211(k) of the CAA (42.U.S.C. 7545(c) and (k)). Section 211(c) allows EPA to regulate fuels that contribute to air pollution which endangers public health or welfare, or which impairs emission control equipment. Section 211(k) prescribes requirements for RFG and conventional gasoline and requires EPA to promulgate regulations establishing these requirements. Additional support for the procedural aspects of the fuels controls in today's rule comes from sections 114(a) and 301(a) of the CAA. Today's action is a rulemaking subject to the requirements of CAA section 307(d).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Imports, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: December 2, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–23806 Filed 12–14–05; 8:45 am]

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Thursday,
December 15, 2005

Part V

Securities and Exchange Commission

17 CFR Parts 240, 249 and 274
Internet Availability of Proxy Materials; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 249 and 274

[Release Nos. 34–52926; IC–27182; File No. S7–10–05]

RIN 3235–AJ47

Internet Availability of Proxy Materials

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to the proxy rules under the Securities Exchange Act of 1934 that would provide an alternative method for issuers and other persons to furnish proxy materials to shareholders by posting them on an Internet Web site and providing shareholders with notice of the availability of the proxy materials. Copies would be available to shareholders on request, at no cost. The proposed amendments are intended to put into place processes that would provide shareholders with notice of, and access to, proxy materials while taking advantage of technological developments and the growth of the Internet and electronic communications. Issuers that rely on the proposed amendments would be able to lower costs of proxy solicitations that ultimately are borne by shareholders. The proposed amendments also would apply to a soliciting person other than the issuer, which we anticipate might reduce the costs of engaging in a proxy contest. Today's proposals would not apply to business combination transactions. These proposals also would not affect the availability of any existing method of furnishing proxy materials.

DATES: Comments must be received on or before February 13, 2006.

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–10–05 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–10–05. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed*). Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Raymond A. Be, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: The Commission today proposes amendments to Rules 14a–2,[1] 14a–3,[2] 14a–4,[3] 14a–7,[4] 14a–8,[5] 14a–12,[6] 14a–13,[7] 14b–1,[8] 14b–2,[9] 14c–2,[10] 14c–3,[11] 14c–5,[12] 14c–7,[13] Schedule 14A,[14] Schedule 14C,[15] Form 10–K,[16] Form 10–KSB,[17] Form 10–Q,[18] Form 10–QSB,[19] and Form N–SAR[20] under the Securities Exchange Act of 1934.[21]

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I. Introduction

We are proposing amendments to the proxy rules to update our regulatory framework to take advantage of communications technology and provide an alternative proxy model that could reduce the printing and mailing costs associated with furnishing proxy materials to shareholders.[22] The proposed amendments would provide an alternative method for furnishing proxy materials to shareholders based on a ''notice and access'' model. Under the proposals, an issuer would be able to satisfy its obligations under the Commission's proxy rules by posting its proxy materials on a specified, publicly-accessible Internet Web site (other than the Commission's EDGAR Web site) and providing shareholders with a notice informing them that the materials are available and explaining how to access those materials.[23] These proposals are

[1] 17 CFR 240.14a–2.
[2] 17 CFR 240.14a–3.
[3] 17 CFR 240.14a–4.
[4] 17 CFR 240.14a–7.
[5] 17 CFR 240.14a–8.
[6] 17 CFR 240.14a–12.
[7] 17 CFR 240.14a–13.
[8] 17 CFR 240.14b–1.
[9] 17 CFR 240.14b–2.
[10] 17 CFR 240.14c–2.
[11] 17 CFR 240.14c–3.
[12] 17 CFR 240.14c–5.
[13] 17 CFR 240.14c–7.
[14] 17 CFR 240.14a–101.
[15] 17 CFR 240.14c–101.
[16] 17 CFR 249.310.
[17] 17 CFR 249.310a.
[18] 17 CFR 249.308a.
[19] 17 CFR 249.308b.
[20] 17 CFR 274.101.
[21] 15 U.S.C. 78a *et seq.*

[22] For purposes of this release, the term ''proxy materials'' includes proxy statements on Schedule 14A, proxy cards, information statements on Schedule 14C, annual reports to security holders required by Rules 14a–3 and 14c–3 of the Exchange Act, notices of shareholder meetings, additional soliciting materials, and any amendments to such materials.

[23] An issuer also would have to continue to file its proxy materials on the Commission's EDGAR Web site and furnish its annual report to security holders to the Commission pursuant to Rules 14a–3 and 14c–3. These proposed rules do not affect any

intended to establish procedures that would promote use of the Internet as a reliable and cost-efficient means of making proxy materials available to shareholders. The proposed amendments would provide a new alternative to existing methods of furnishing proxy materials, which would not be affected by the proposal.

Shareholders and other persons conducting their own proxy solicitations would be able to rely on the proposed amendments under requirements substantially similar to the requirements that would apply to issuers. As a result, these proposals also would give these shareholders and other persons an alternative method to furnish proxy materials that may have the effect of reducing the cost of engaging in a proxy contest. Because the proposed amendments provide an alternative method for furnishing proxy materials, they would not eliminate the ability of an issuer or other soliciting person to comply with existing methods of furnishing proxy materials. The proposed alternative would not be available to issuers or other soliciting persons in the context of a business combination transaction.

The proposed amendments would require an issuer that is relying on the proposed ''notice and access'' model to provide a shareholder with a copy of the materials upon request (in paper or by e-mail, as requested). A soliciting person other than the issuer may choose not to provide a copy of its proxy materials to a requesting shareholder if the person is conducting a conditional ''electronic only'' proxy solicitation and soliciting proxy authority only from shareholders willing to electronically access the soliciting person's proxy materials.[24]

Under the proposed ''notice and access'' model, the issuer would be able to send a notice to shareholders (the ''Notice of Internet Availability of Proxy Materials'' or ''Notice'') at least 30 days before the meeting, or if no meeting is to be held, at least 30 days before the date the votes, consents, or authorizations may be used to effect a corporate action, indicating that the issuer's proxy materials are available on a specified Internet Web site and explaining how to access those proxy materials. The Notice also would explain the procedure for requesting a copy of the materials, if a shareholder desires such a copy.

As proposed, an issuer or other soliciting person need not rely on the ''notice and access'' model with regard to all proxy-related materials. The amendments would permit a soliciting person to choose to rely on the proposed model as a means of furnishing some proxy-related documents to shareholders and use other means, such as paper documents, with regard to other proxy-related materials. For example, an issuer could choose to use the ''notice and access'' model for its proxy statement and to furnish its annual report to security holders (commonly referred to as the ''glossy annual report'') in paper through the U.S. mail. However, the proposed ''notice and access'' model would require a soliciting person to furnish the proxy card together with, and using the same medium as, either the Notice of Internet Availability of Proxy Materials or the proxy statement.[25]

II. Background

We believe that continuing technological developments and the expanded use of the Internet now merit consideration of an alternative method for the dissemination of proxy materials. We also believe that our proposed alternative model could facilitate effective and cost-efficient communications between issuers, shareholders, and intermediaries. We previously published extensive guidance regarding the electronic delivery of materials under the federal securities laws.[26] We believe the proposed alternative model would address the possibility, as identified by market participants, that a significant portion of the difficulties that issuers have encountered in implementing our existing guidance to date has stemmed from shareholders' inattention to requests for consent to electronic delivery rather than an unwillingness to receive documents electronically.[27]

In 2000, we discussed an ''access equals delivery'' model and an implied consent model as possible alternatives to the existing electronic delivery conditions. In our 2000 Interpretive Release, we described the ''access equals delivery'' model as one under which ''investors would be assumed to have access to the Internet, thereby allowing delivery to be accomplished *solely* by an issuer posting a document on the issuer's or a third party's Web site.'' [28] In that release, we also described the ''implied consent'' model as one that would allow an issuer to rely on electronic delivery if intended recipients did not affirmatively object when notified of the issuer's or intermediary's intention to deliver documents in an electronic format.

We did not take action regarding either of those models in 2000. With the passage of five years and the increased use of the Internet as a means to quickly, reliably, and inexpensively disseminate information, we think it is again appropriate to consider the effect that technological developments have had on making information available and propose an alternative model for furnishing proxy materials.

More than 10.7 million beneficial shareholders already have given their consent to electronic delivery of proxy materials and approximately 85% of their shares were voted electronically or telephonically during the 2005 proxy season.[29] Moreover, recent data indicates that up to 75% of Americans have access to the Internet in their homes, and that this percentage is increasing steadily among all age groups.[30]

current Commission filing requirement, except that a soliciting person following the proposed model would be required to file the proposed notice as additional soliciting material under Exchange Act Rule 14a–6(b) [17 CFR 240.14a–6(b)].

[24] An issuer would be unlikely to conduct such an ''electronic only'' proxy solicitation, as it would have an obligation to provide shareholders who are not being solicited with an information statement that complies with Regulation 14C [17 CFR 14c–1 through 14c–101]. In addition, the rules of some trading markets require issuers to solicit proxies from all of their shareholders.

[25] In the proposed regulatory text at the end of this release, we refer to proxy cards as ''forms of proxy'' for consistency with existing Commission rules.

[26] Release No. 33–7233 (Oct. 6, 1995) [60 FR 53458] (the ''1995 Interpretive Release'') provided guidance on electronic delivery of prospectuses, annual reports to security holders and proxy solicitation materials under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*], the Securities Exchange Act of 1934, and the Investment Company Act of 1940 15 U.S.C. 80a–1 *et seq.*]. Release No. 33–7288 (May 9, 1996) (the ''1996 Interpretive Release'') provided guidance on electronic delivery of required information by broker-dealers and transfer agents under the Securities Act, the Exchange Act, and the Investment Company Act. Release No. 33–7856 (Apr. 28, 2000) [65 FR 25843] (the ''2000 Interpretive Release'') provided guidance on the use of electronic media to deliver documents under the federal securities laws, an issuer's liability for Web site content, and basic legal principles that issuers and market intermediaries should consider in conducting online offerings.

[27] See, for example, the third Q&A in Section J: Which Issuers Are Using Electronic Delivery, in FAQ on Electronic Delivery, available at *www.realcorporatelawyer.com/faqs/ed.html*.

[28] We note that the ''notice and access'' model that we are proposing in this release would require both notice and posting of the materials on the Internet. Thus, it would not follow a pure ''access equals delivery'' model, as described in the 2000 Interpretive Release.

[29] According to data available on the Web site of Automatic Data Processing, Inc. See *www.ics.adp.com/release11/public_site/about/stats.html*.

[30] See *Three Out of Four Americans Have Access to the Internet*, Nielsen//NetRatings, March 18, 2004; Robyn Greenspan, *Senior Surfing Surges*, ClickZNetwork, Nov. 20, 2003 (citing statistics from Neilsen/NetRatings and Jupiter Research). In

Continued

In connection with our recent Securities Offering Reform effort, we adopted new Securities Act Rule 172,[31] which implements an ''access equals delivery'' model in the context of final prospectus delivery.[32] Under Rule 172, a final prospectus is deemed to precede or accompany a security for sale for purposes of Securities Act Section 5(b)(2)[33] so long as the company offering the security files with the Commission a final prospectus meeting the requirements of Securities Act Section 10(a)[34] as part of the registration statement pursuant to Securities Act Rule 424.[35] Investors will be able to access the electronically filed final prospectus on EDGAR, but no longer will receive a copy unless they request one.[36] Two commenters on the Securities Offering Reform proposing release suggested that we consider proposing similar ''access equals delivery'' amendments in the context of the proxy rules.[37]

Request for Comment

- Has Internet access become sufficiently widespread to make a ''notice and access'' model for furnishing proxy materials a viable model?
- Is the means by which most shareholders access the Internet sufficient to access lengthy documents such as annual reports, proxy statements, and information statements? Would investors be excessively burdened by having to download and print these documents?
- As technology has progressed, so has the amount of content that can be transmitted electronically. Many Internet Web sites currently use advanced formatting that may not be compatible with, or may substantially slow, dial-up connections. Do shareholders need broadband technology to efficiently download lengthy documents such as annual reports, proxy statements, and information statements? If so, do shareholders have sufficient access to broadband technology to make the proposal described in this release feasible?
- As part of the ''notice and access'' model, should we require issuers and other soliciting persons to make their proxy materials available in a format that can be readily downloaded by shareholders over dial-up connections? Should we require issuers and other soliciting persons to provide, where available, links to third-party Web sites from which shareholders would be able to download, free of charge, any software necessary to view the documents?
- Do issuers have sufficient bandwidth on their Internet Web sites to handle any anticipated increased traffic? What actions would issuers have to take to ensure that their Internet Web sites have sufficient capacity to handle the increased traffic?
- Should the proposed model instead be based on obtaining a shareholder's consent? If so, what type of consent should be required (*e.g.*, should a shareholder's affirmative consent, implied consent, or other type of consent be required?) and should any disclosure be required in connection with the request for consent? If so, what disclosure should be required?

III. Description of the Proposed Amendments

A. Proposed ''Notice and Access'' Model for Furnishing of Internet Proxy Materials by an Issuer

The proposed amendments would permit an alternative means for an issuer to furnish proxy materials to all of its shareholders. These proxy materials include:

- Notices of shareholder meetings;[38]
- Schedule 14A proxy statements and consent solicitation statements;
- Proxy cards;
- Schedule 14C information statements;
- Annual reports to security holders;[39]
- Additional soliciting materials;[40] and
- Any amendments to such materials that are required to be furnished to shareholders.

With regard to solicitations other than those in connection with business combination transactions, the proposed amendments would permit all issuers to use the ''notice and access'' model for all shareholders. The availability of the ''notice and access'' model would not be determined by any characteristics of either the issuer or the shareholder.

Request for Comment

- Should the ''notice and access'' model be available with respect to all shareholders of all issuers, or should there be limitations on its use?
- Should the availability of the ''notice and access'' model depend on the nature of the issuer? For example, should the ''notice and access'' model be available for all issuers or should its availability depend on the issuer's Securities Act registration statement form eligibility (*e.g.*, Form S–3 eligibility) or the issuer's Exchange Act reporting history (*e.g.*, only those issuers that are current in their Exchange Act reporting)?
- Should the availability of the ''notice and access'' model depend on the nature of the issuer's investors? For example, should the ''notice and access'' model be equally available with respect to all shareholders (*e.g.*, institutional versus individual shareholders, more financially sophisticated shareholders versus less financially sophisticated shareholders)?
- Should mutual funds, closed-end funds, business development companies, and other investment companies be permitted to use the ''notice and access'' model?
- In addressing each of the questions above, commenters are asked to address differences in the degree to which different categories of investors in particular types of issuers have access to, and are prepared to use, the Internet in receiving communications from the issuer.

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addition, there is evidence suggesting that the ''digital divide'' is narrowing. See, for example, Kristen Fountain, *Antennas Sprout, and a Bronx Neighborhood Goes Online*, The N.Y. Times, June 10, 2004 at G8; Steve Lohr, *Libraries Wired, and Reborn*, The N.Y. Times, Apr. 22, 2004 at G1. However, studies have varied. One study concluded that only 63% of Americans age 18 or older had Internet access in 2004, and that only 25% of persons over the age of 65 had Internet access in the same year. See *Trends 2005* by the Pew Research Center. Nonetheless, these percentages are significantly higher than the approximately 15% of Americans estimated to have Internet access in 1995 and the 48% in 2000. *Id.*

[31] 17 CFR 230.172.

[32] See Release No. 33–8591 (July 19, 2005) [70 FR 44721].

[33] 15 U.S.C. 77e(b)(2).

[34] 15 U.S.C. 77j(a).

[35] 17 CFR 230.424.

[36] See Securities Act Rule 173(d) [17 CFR 230.173(d)].

[37] See comment letters on Release No. 33–8501 (Nov. 3, 2004) [69 FR 67392] from the Society of Corporate Secretaries and Governance Professionals and Intel Corporation, available at *http://www.sec.gov/rules/proposed/s73804.shtml*.

[38] The notice of a shareholder meeting typically is required under state law. However, issuers traditionally deliver the notice together with the proxy materials. Because we intend for our proposed rules to have no impact on state corporation law obligations, the proposed rules would not permit use of the proposed alternative model if the law in the state in which an issuer is incorporated would not permit reliance on the alternative model.

[39] The requirement to furnish annual reports in Rules 14a–3 and 14c–3 under the Exchange Act does not apply to registered investment companies. See 17 CFR 240.14a–3(b) and 240.14c–3(a). The proposals in this release do not apply to the requirement for every registered investment company, at least semi-annually, to transmit reports to shareholders under Section 30(e) of the Investment Company Act of 1940 [15 U.S.C. 80a–29(e)] and the rules thereunder.

[40] Our rules permit, but do not require, delivery of additional soliciting materials. See Rule 14a–6(b).

1. Notice of Internet Availability of Proxy Materials

To notify shareholders of the availability of the proxy materials on the specified Internet Web site, an issuer relying on the proposed ''notice and access'' model would have to send a Notice of Internet Availability of Proxy Materials to shareholders 30 days or more in advance of the shareholder meeting date or, if no meeting is to be held, 30 days or more in advance of the date that votes, consents, or authorizations may be used to effect the corporate actions to be voted on.[41] The 30-day period is to provide shareholders with sufficient time to receive the Notice, request copies of the materials, if desired, and review the proxy materials prior to voting.[42] We would view the Notice as additional soliciting material that would have to be filed with the Commission pursuant to Rule 14a–6(b) no later than the date it is first sent or given to shareholders.

The proposed Notice of Internet Availability of Proxy Materials and the notice of a shareholder meeting required under state corporation law could be combined together into a single document, unless prohibited by state law. The Notice could not be combined with any document other than the state law meeting notice. We believe that it is important for the Notice to be furnished in a way that brings it to each shareholder's attention. Therefore, whether or not combined with the state law meeting notice, the Notice of Internet Availability of Proxy Materials must be sent separately from other types of shareholder communications and may not accompany any materials other than the proxy card and return envelope.[43]

The Notice of Internet Availability of Proxy Materials would have to include the following information in clear and understandable terms:

• A prominent legend in bold-face type that states:

''Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting to Be Held on [insert meeting date].[44]

• This communication presents only an overview of the more complete proxy materials that are available to you on the Internet. We encourage you to access and review all of the important information contained in the proxy materials before voting.

• The [proxy statement] [information statement] [annual report to shareholders] [proxy card] are available at [Insert Web site address].

• If you want to receive a paper or e-mail copy of these documents, you must request one. There is no charge to you for requesting a copy. Please make your request for a copy as instructed below on or before [Insert a date that is two weeks or more before the meeting date] to facilitate timely delivery. If you hold your shares through a broker, bank, or other intermediary, you may request delivery of a copy of the proxy materials through that intermediary, but it likely will take longer to receive your materials through an intermediary than directly from the company.''

• The date, time, and location of the meeting or, if corporate action is to be taken by written consent, the earliest date on which the corporate action may be effected;

• A clear and impartial identification of each separate matter intended to be acted upon and the issuer's recommendations regarding those matters, but no supporting statements;

• A list of the materials being made available at the specified Web site; and

• (1) A toll-free telephone number, and (2) an e-mail address where the shareholder can request a copy of the proxy materials.

Only the information specified above and, if it is being combined with the state law meeting notice, any information required by state law, could be included in the Notice. To ensure that the Notice is clear and understandable, it would have to meet substantially the same plain English principles as apply to key sections of Securities Act prospectuses pursuant to Securities Act Rule 421(d).[45]

As proposed, an issuer would be permitted to furnish its proxy materials to shareholders by timely furnishing the Notice of Internet Availability of Proxy Materials to them and posting its proxy materials on a publicly accessible Web site. The issuer would have to post its proxy materials on the Web site on or before the time that shareholders receive the Notice. The proxy materials would have to remain accessible on the Web site free of charge through the time of the shareholder meeting to which the proxy materials relate, as discussed below.[46] As noted below, the proposals would impose a separate obligation under the proxy rules on an issuer using the ''notice and access'' model to provide a copy of the proxy materials to shareholders upon request.[47]

The proposed alternative model would permit an issuer to ''household'' the Notice of Internet Availability of Proxy Materials pursuant to Rule 14a–3(e),[48] as we propose to amend it. Accordingly, an issuer could send a single copy of the Notice of Internet Availability of Proxy Materials to one or more shareholders residing at the same address if the issuer satisfies all of the Rule 14a–3(e) conditions.[49] The issuer would not have to re-solicit consent from shareholders that already have consented to householding of proxy materials to household the Notice of Internet Availability of Proxy Materials. However, the issuer would have to make available a separate proxy card to each shareholder at the shared address, as required by the current householding rule.[50]

Request for Comment

• Is it appropriate to provide issuers with the alternative of using the ''notice and access'' model to furnish annual reports and proxy statements or information statements, as proposed? Should we modify the proposed ''notice and access'' model in any way? If so, how?

• The proposed requirement that an issuer choosing to rely on the ''notice and access'' model would have to send the Notice of Internet Availability of Proxy Materials to shareholders 30 days or more in advance of the shareholder meeting date is designed to provide sufficient time for a shareholder to request a copy of the proxy materials, if desired, and to review the materials prior to voting. Would the proposed 30-

[41] This Notice could be sent electronically under existing permitted methods.

[42] If these proposals are adopted, the Commission staff intends to review its Exchange Act Rule 14a–8 [17 CFR 240.14a–8] shareholder proposal internal processing procedures and timetables, and revise them if necessary, to ensure that issuers are able to comply with the proposed 30-day deadline.

[43] As discussed in more detail later in this release, in the case of an intermediary forwarding proxy materials to beneficial owners, a request for voting instructions from the intermediary is the functional equivalent to a proxy card and would be permitted to accompany the Notice.

[44] Appropriate changes may be made if the issuer is providing an information statement pursuant to Regulation 14C or seeking to effect a corporate action by written consent.

[45] 17 CFR 230.421(d).

[46] See proposed Rule 14a–3(g). If revised proxy materials are required to be furnished to shareholders and the issuer wishes to rely on the proposed alternative model to furnish those revised materials, the issuer would have to furnish another Notice to inform shareholders that those revised proxy materials are available on the specified Web site.

[47] See proposed Rule 14a–3(g)(7).

[48] 17 CFR 240.14a–3(e).

[49] If the Notice is sent via e-mail, the householding rules do not permit the sending of only one copy. See Rule 14a–3(e)(1)(ii)(B)(*4*) [17 CFR 240.14a–3(e)(1)(ii)(B)(*4*)].

[50] Issuers also are required to share a listing of the shareholders that have consented to householding with soliciting shareholders, or afford the benefit of such consents to a soliciting shareholder if the issuer is mailing proxy materials on the shareholder's behalf. See Rule 14a–7(a)(2) [17 CFR 240.14a–7(a)(2)].

day period achieve this objective? Would a shorter or longer period be more appropriate? If so, please specify the length of the period that would be more appropriate and explain why.

• Are the proposed means by which a shareholder can request a copy of the proxy materials appropriate? Should the issuer's provision of an e-mail address from which shareholders can request copies be optional? Should the rules expressly reference other appropriate means by which shareholders can request a copy of the proxy materials? Should the rules specifically require that the issuer provide shareholders with a postage-paid, pre-addressed reply card to request a copy of the materials?

• Should we permit issuers to household the Notice of Internet Availability of Proxy Materials, as proposed? If not, why not?

• Should we require or permit additional information in the Notice of Internet Availability of Proxy Materials? For example, if the issuer is aware that a proxy contest is being effected, should it be required to indicate in the Notice that such a contest exists? Also, if the issuer recommends a vote in opposition to a shareholder proposal, should it be required to state that the proxy statement contains the shareholder's statement in support of the proposal? Should we permit the Notice to include a request for the shareholder's affirmative consent to future electronic delivery of the Notice?

• We have proposed that the Notice contain ''a clear and impartial identification'' of matters to be acted upon. This language mirrors language currently found in Rule 14a–4 related to the proxy card to indicate that such identification should be as brief as it currently is on proxy cards. We also propose that a soliciting party may not include a supporting statement. We have included these proposals because we do not intend the Notice to become a means of persuading shareholders how to vote. Should the rules be more specific regarding the brief and factual nature that we intend for the identification of matters to be acted upon?

• Is the language of the proposed legend appropriate? If not, what should be changed and why?

• Should we permit materials in addition to the proxy card and a return envelope to accompany the Notice of Internet Availability of Proxy Materials? If so, what types of materials should we permit? For investment companies, should we permit a copy of the company's current prospectus or profile to accompany the proxy card and Notice?

• Should we require issuers to apply plain English principles to the Notice of Internet Availability of Proxy Materials, as proposed? If so, should we apply requirements similar to those in Rule 421(d) or Rule 421(b)[51] under the Securities Act? Should we establish different plain English standards for the Notice? If so, what? Is it unnecessary to apply plain English principles to the Notice, given the brevity of the Notice and factual nature of the information to be included in the Notice?

• Is it appropriate to impose a separate obligation on the issuer under Section 14(a) to provide a copy of the proxy materials to requesting shareholders? If not, are there other options that we should consider to ensure that copies are available to shareholders that desire them? Should an issuer or other soliciting person be permitted to charge a requesting shareholder for a paper copy of the proxy materials?

• Should the proposed rules instead indicate that an issuer does not satisfy its requirement to furnish a proxy or information statement to a shareholder requesting a copy until it provides that copy to the shareholder?

• Should we require the Notice to be filed with the Commission under Rule 14a–6(b), as proposed? Should we create a new EDGAR form type for filing the Notice? Should a special EDGAR form type be created for a Notice regarding the availability of a Schedule 14C information statement? Would it cause confusion if such a Notice is filed under a Regulation 14A rule?

• As noted above, the proposed rules would require a second Notice if revised proxy materials are required to be furnished to shareholders and the issuer wishes to rely on the proposed model to do so. Are there other situations in which an issuer should be required to furnish a second Notice?

2. Mechanics of the Proposed ''Notice and Access'' Model

i. Proxy Card

Under the proposed rules, an issuer would be permitted, but not required, to furnish the proxy card together with the Notice of Internet Availability of Proxy Materials, by means of the same delivery medium.[52] Although the proposed rules would not require the proxy card and the Notice of Internet Availability of Proxy Materials to be furnished together through the same medium, the proxy card would have to either be:

• Furnished together with, and through the same medium as, the Notice of Internet Availability of Proxy Materials; or

• Furnished together with, and through the same medium as, the proxy statement.[53]

Request for Comment

• Should the rules, as proposed, permit an issuer to furnish a proxy card and the Notice of Internet Availability of Proxy Materials to shareholders separately and through the use of different media, subject to the proposed limitations? If not, why not?

• Would it be more appropriate to require that the proxy card always be furnished together with and through the same delivery means as the Schedule 14A proxy statement and the annual report to shareholders? For example:

• If the proxy card was furnished electronically, the proxy statement and annual report to shareholders also would have to be furnished together with the proxy card electronically, regardless of the means by which the Notice of Internet Availability of Proxy Materials was furnished; or

• If the proxy card was furnished in paper, the proxy statement and annual report to shareholders also would have to be furnished together with the proxy card in paper, regardless of the means by which the Notice of Internet Availability of Proxy Materials was furnished.

Conversely, should we require that the proxy card always accompany the Notice, regardless of the manner in which the proxy statement and/or the annual report to shareholders was furnished? Please provide support for your position.

• Exchange Act Rule 14a–6 requires the preliminary filing of the proxy statement and the proxy card.[54] That rule provides an exclusion from the preliminary filing requirement for so-called ''plain vanilla'' proxy materials that relate to a meeting of security holders at which only a specified list of common matters are to be considered.[55]

[51] 17 CFR 230.421(b). Rule 421(b) contains plain English requirements that are less stringent than those in Rule 421(d).

[52] An issuer could use existing permitted methods to furnish both the Notice and the proxy card to shareholders electronically.

[53] The furnishing of the proxy card together with the proxy statement could be accomplished through posting them both on the Internet Web site in accordance with the proposed model.

[54] 17 CFR 240.14a–6.

[55] Exchange Act Rule 14a–6 provides that proxy materials fall within the exclusion if the only matters to be voted on at the meeting are: (1) The election of directors; (2) the election, approval or ratification of accountant(s); (3) a security holder proposal submitted pursuant to Exchange Act Rule 14a–8; (4) the approval or ratification of a plan as defined in Item 402(a)(7)(ii) of Regulation S–K [17 CFR 229.402(a)(7)(ii)]; (5) with respect to an investment company registered under the Investment Company Act of 1940, or a business

Those proxy materials may be filed in definitive form only. Would it be more appropriate to require that the proxy card be furnished together with and by the same means as the proxy statement and the annual report to shareholders, regardless of the means by which the Notice of Internet Availability of Proxy Materials is furnished, unless Rule 14a–6 would permit the proxy materials to be filed in definitive form only, or unless the meeting addresses only those matters listed in Rule 14a–6, notwithstanding the exclusion in that rule regarding solicitations in opposition? In either of those situations, would it be appropriate to permit or require the Notice of Internet Availability of Proxy Materials and the proxy card to be furnished together and by the same means even if the proxy materials and/or the annual report to shareholders were furnished separately and/or through a different means (for example, the Notice of Internet Availability of Proxy Materials and proxy card furnished together in paper and the proxy statement and/or the annual report to shareholders posted on an Internet Web site)?

• Would a shareholder be more or less likely to access and review the proxy statement and annual report before voting if these documents were posted electronically on the Internet Web site, but the proxy card was delivered to shareholders in paper with the Notice?

• Would the proposed model increase issuers' dependency on discretionary broker voting? [56] Would it increase the amount of discretionary voting? Are there circumstances in which brokers or other intermediaries might be uncertain as to their ability to cast discretionary votes (*e.g.,* if a shareholder requests delivery of the proxy materials but has not sent voting instructions 10 days prior to the meeting)? What might be the consequences of such uncertainty? Should there be increased or more prominent disclosure regarding how those discretionary broker votes operate? If so, what added disclosure should be required? Where should such disclosure appear (*e.g.,* on the Notice)?

• Much shareholder voting currently is tabulated through the use of machine readers to identify and verify a shareholder's position. If an issuer posts its proxy card on the Internet Web site along with other proxy materials and permits shareholders to print out the proxy card and return it to the tabulator, should we adopt rules that would require the printout to include bar codes or other identification conducive to the automated processing of votes? Do we need to provide for the ability to include such codes on the Notice?

• If an issuer chooses to post its proxy card on an Internet Web site, what, if any, technological difficulties would this present for voting the proxies? In this regard, please discuss the technology that is available, or may be developed, for posting proxy cards and voting through Internet Web sites. Are additional rule changes necessary to facilitate the use of this technology?

• If an issuer chooses not to send a proxy card with its Notice, should an intermediary be allowed to decide whether to send out a request for voting instructions with the Notice?

• A beneficial owner cannot, in most cases,[57] execute a valid proxy because a beneficial owner is not the holder of record under state law. Instead, a beneficial owner typically submits voting instructions to its intermediary. If an issuer chose to post its proxy card on a Web site with other proxy materials, should the rules require the intermediary to establish its own Internet Web site to post its request for voting instructions? Should the proxy materials be placed on that Internet Web site as well? Should the intermediary be required to create its own Notice, or use some other means, to clarify to beneficial owners that they cannot execute the proxy available on the issuer's Web site? Should issuers adopt some means to prevent persons other than holders of record from being able to print or download the proxy card from its Web site?

• If an intermediary creates its own Notice and directs beneficial owners to its own Internet Web site to obtain proxy materials and the request for voting instructions, should the proxy rules be amended to provide that an issuer would not be required to send copies of its Notice to the intermediaries pursuant to Rule 14a–13? When and how should the intermediary notify the issuer that it will create its own Notice?

ii. Internet Web Site Posting of Proxy Materials

All proxy materials to be furnished through the ''notice and access'' model, other than additional soliciting materials, would have to be posted on a specified Internet Web site by the time the issuer sends the Notice of Internet Availability of Proxy Materials to shareholders. These materials would have to remain on that Web site and be accessible to shareholders through the time of the related shareholder meeting, at no charge to the shareholder. As discussed above, the Notice must clearly identify the Internet Web site address at which the materials are available. The Internet Web site address must be specific enough to lead shareholders directly to the proxy materials, rather than to the home page or other section of the Web Site on which the proxy materials are posted, so that shareholders do not have to browse the Web site to find the materials. The Internet Web site that an issuer uses to electronically furnish its proxy materials to shareholders must be a publicly accessible Internet Web site other than the Commission's EDGAR Web site.[58]

There are two primary reasons why we propose not to allow use of the EDGAR Web site for this purpose. First, issuers are not required to furnish their glossy annual reports to the Commission using the EDGAR system.[59] Most issuers, therefore, furnish paper copies of these annual reports to the Commission. Even with respect to the issuers that choose to furnish the annual report to the Commission via EDGAR, they generally omit graphics included in the paper version, such as charts and tables, from their EDGAR submissions.[60] Second, it is our view that electronically posted proxy materials should be presented on the Internet Web site in a format that provides a substantially identical version of those materials, including all charts, tables, graphics, and similarly

development company, a proposal to continue, without change, any advisory or other contract or agreement that previously has been the subject of a proxy solicitation for which proxy material was filed with the Commission; and/or (6) with respect to an open-end investment company registered under the Investment Company Act of 1940, a proposal to increase the number of shares authorized to be issued. This exclusion from the filing requirement does not apply if the registrant comments upon or refers to a solicitation in opposition in connection with the meeting in its proxy material.

[56] See NYSE Rule 452. This rule permits a broker, in specified circumstances, to vote on behalf of a beneficial owner if it has furnished proxy soliciting materials to the beneficial owner and has not received voting instructions.

[57] A beneficial owner could execute a proxy directly if the intermediary (the holder of record) has appointed the beneficial owner as its proxy with respect to the beneficial owner's shares.

[58] Issuers still would be required to file their proxy materials on the Commission's EDGAR system, except that the annual report to shareholders would continue to be furnished to the Commission. This filing, and the furnishing of the annual report to shareholders, would have to be accomplished by the time the issuer posts the materials on the Web site.

[59] Our rules permit, but do not require, issuers to submit the annual report to shareholders electronically on EDGAR. See Rule 101(b)(1) of Regulation S–X [17 CFR 232.101(b)(1)].

[60] Item 304 of Regulation S–T [17 CFR 232.304] requires a registrant that omits graphic material to provide a narrative description of the omitted material.

formatted information, as otherwise furnished to shareholders in a different medium such as paper. Currently, the EDGAR system accepts documents only in ASCII[61] or HTML[62] format. Further, documents filed on EDGAR may omit or describe, but generally do not replicate, some disclosures, including charts and graphs.[63] As a result, merely hyperlinking from the specified publicly accessible Internet Web site to the filing on the Commission's EDGAR system would not satisfy the requirement.[64]

Request for Comment

• Should the issuer be able to make its proxy materials electronically available only on the EDGAR Web site? If so, how would it make the glossy annual report electronically available to shareholders?

• Should we require issuers following the proposed model to post all of their proxy materials on the Internet Web site so that those materials would be readily accessible in one place? Should we require companies to electronically post on the Web site any soliciting materials that are disseminated prior to furnishing a proxy statement pursuant to Rule 14a–12?[65]

• Should the rules, as proposed, require proxy materials posted on an Internet Web site to be presented in a format that is substantially identical in appearance to the format used in paper copies of the materials? Are there any advantages to requiring or permitting the proxy materials to be posted electronically in HTML or ASCII format (*e.g.,* would this lessen concerns about the ability of shareholders to easily download the materials or speed the downloading process)? Should issuers have to post their proxy materials in both PDF and HTML formats?

• Should there be additional specified requirements regarding the Internet Web site posting of information? For example, should the alternative model specifically prohibit or require: Pre-registration by shareholders at the Web site before they are granted access to the proxy materials; the issuer's use of third-party Web sites to host the issuer's proxy materials; or the issuer's use of disclaimers of liability or responsibility for the information?[66]

• Should we require annual reports to security holders to be filed, or furnished, on EDGAR?

iii. Period of Reliance on the Proposed Model

The proposed alternative model for making proxy materials electronically available to shareholders would be effective only with respect to a particular meeting. An issuer's choice to rely on the ''notice and access'' model for one meeting therefore would not affect its determination of whether to rely on the model for subsequent meetings. Similarly, a shareholder that does not request a copy of the proxy materials for one meeting would not be bound by that decision with respect to any other shareholder meeting. Each time that an issuer chooses to rely on the proposed ''notice and access'' model for a shareholder meeting, it would have to comply anew with all of the requirements under that model, including delivery of the Notice and the 30-day notice period.

Request for Comment

• Should a shareholder and/or the issuer be bound by the shareholder's initial decision as to whether or not to request a copy of the proxy materials in subsequent proxy seasons? If so, should the issuer be subject to the 30-day notice period regarding delivery of the Notice of Internet Availability of Proxy Materials in subsequent proxy seasons only with respect to shareholders who made an initial decision to request a copy of the proxy materials (with the result that the issuer could, for example, deliver the Notice to other shareholders 25 days rather than 30 days before the new meeting date)?

• Should an adjournment of a shareholder meeting require the issuer to deliver a second Notice of Internet Availability of Proxy Materials? If so, should the issuer have to deliver that Notice to shareholders at least 30 days before the adjourned meeting date?

• Should an issuer be required to deliver an additional Notice of Internet Availability of Proxy Materials to shareholders whenever state law requires the delivery of a shareholder meeting notice?

iv. State Law Notices

State business and corporation laws typically include shareholder meeting requirements, including meeting notice and voting requirements. The proposed rules are not intended to affect any applicable state law requirement concerning the delivery of any document related to an annual meeting or proxy solicitation. Thus, to the extent that state law requires a notice of shareholder meeting or proxy materials to be delivered by a particular means, the proposed rules would not alter those requirements.[67] For example, if the state in which an issuer is incorporated requires notices of shareholder meetings or proxy materials to be transmitted directly to shareholders in paper, the proposed rules would not provide an issuer with an option to satisfy its state law obligations by posting those materials on an Internet Web site.

Request for Comment

• Would the proposed rules create any problems or conflicts with state law? If so, how should those problems be resolved?

v. Additional Soliciting Materials

Rules 14a–3, 14c–2 and 14c–3, as we propose to amend them, would require an issuer to post any additional soliciting materials on the same Internet Web site on which the proxy materials are posted no later than the day on which the additional soliciting materials are first sent to shareholders or made public.[68] Beyond the posting of the additional soliciting materials on the Internet Web site, issuers would continue to be able to decide which additional means, if any, would be most effective for disseminating these materials (*e.g.*, direct mailing, e-mail, newspaper publication, etc.).

Request for Comment

• Under current rules, issuers are required to file with the Commission additional soliciting materials used after furnishing the proxy statement, but issuers are not required to otherwise furnish them to shareholders. We propose that, under the alternative model, these additional materials be filed with us and posted on the specified Internet Web site. Given an issuer's general interest in seeing that such materials are publicized, would such proposed steps be sufficient, or would it also be appropriate to require

[61] ASCII stands for ''American Standard Code for Information Interchange.''

[62] HTML stands for ''hypertext markup language.''

[63] The EDGAR system accepts only unofficial copies in PDF format.

[64] This requirement is therefore different from the provisions regarding Web site posting of Form 10–K annual reports and materials that are incorporated by reference into certain Securities Act registration statement forms.

[65] 17 CFR 240.14a–12.

[66] See our existing guidance on such matters (*e.g.*, Release No. 33–8518 (Dec. 22, 2004) [70 FR 1505] and Release No. 33–8128 (Sept. 5, 2002) [67 FR 58480]).

[67] Issuers typically include the meeting notices required by state law at the beginning of their proxy statements. The proposal would permit any information necessary to meet such a state law requirement to be combined with the Notice.

[68] Exchange Act Rule 14a–6 currently requires an issuer or other soliciting person choosing to deliver additional soliciting materials to file them with the Commission in the same form as the materials that are sent to shareholders, no later than the date that they are first sent or given to shareholders.

a public notice of additional soliciting materials, such as a press release?

3. Requests for Copies of Proxy Materials

Although an issuer could satisfy its requirement to furnish proxy materials through the ''notice and access'' model, it would have a separate requirement under proposed Rule 14a–3(g)(7) to deliver a copy of the proxy materials to a requesting shareholder.[69] Upon receipt of a request from a shareholder for a copy of the proxy materials from the issuer, the issuer would have to send a copy (in paper or by e-mail, as requested) of the proxy materials to the shareholder within two business days after receiving the request, even if the request is made after the date of the shareholder meeting or corporate action to which the proxy materials relate. When the issuer provides a paper copy of the proxy materials in response to a shareholder request, the issuer would be required to use first class mail or other reasonably prompt means of delivery.

The proposed requirements that an issuer deliver the Notice of Internet Availability of Proxy Materials at least 30 days before the annual meeting date and respond to a request for a copy of the proxy materials within two business days are designed to provide approximately two weeks for a shareholder to request a copy, receive it, and still have approximately two weeks to review the proxy materials and make an informed voting decision. Under the proposals, however, it is incumbent on the shareholder to request a copy in sufficient time to receive the copy of the proxy materials, review that copy, and vote.

Under the proposals, the shareholder may request its intermediary to obtain and forward a copy of the proxy materials from the issuer on the shareholder's behalf. These procedures are discussed more fully in Section III.B of this release concerning duties of intermediaries.

Request for Comment

• As proposed, it would be the responsibility of a shareholder desiring a copy of the proxy materials to request one in sufficient time to receive the materials before the meeting. Is this appropriate? Should the Notice of Internet Availability of Proxy Materials state a date by which a shareholder desiring a copy must request it a specified number of days in advance of the meeting date (*e.g.*, a shareholder must request a copy no later than 10 or 15 days before the meeting date)? If so, how far in advance of the meeting date should the shareholder have to request a copy? Establishing a deadline by which shareholders must request copies might increase the likelihood that a shareholder will receive materials before the meeting, but also would reduce the amount of time that shareholders have to make the request. Which of these competing interests, if any, is more important?

• Alternatively, should the proposed rules mandate a minimum period of time after receipt of the Notice of Internet Availability of Proxy Materials during which a shareholder could request a copy of the proxy materials? If so, how long should this period be? Should that period be 15 days, 10 days, or a shorter or longer period?

• Should an issuer have to respond to a request for a copy of the proxy materials made after the annual meeting date, as proposed? If not, why not? If so, should there be any limit on the period after the annual meeting date during which an issuer must respond to a request for a copy?

• Is the proposed two-business-day requirement an appropriate period of time for the issuer to respond to a shareholder's request for a copy of the proxy materials? Should the issuer be required to do so in one business day? Would the issuer need more time, such as three or four business days? If a longer period of time is provided, should the 30-day minimum period between the sending of the Notice and the meeting also be lengthened? If not, why not?

• Is the proposed requirement that an issuer provide requested paper copies by first class mail or other reasonably prompt means appropriate? Should an issuer have to provide the requested paper copy by more expedited means, such as overnight or two-day delivery? Should an issuer have more time to respond to requests for copies if it sends the Notice more than 30 days prior to the meeting?

• Should the proposed rules provide a mechanism for a shareholder that requests a copy of the proxy materials to indicate that he or she wants to continue receiving a copy of the issuer's proxy materials for every subsequent meeting where the issuer relies on the ''notice and access'' model until the shareholder subsequently advises the issuer otherwise? For example, should the rules require an issuer and/or intermediary to develop a list of shareholders who always want their materials in paper? If so, why? If not, why not? How would such a system work?

• At the time the proxy materials are being prepared and printed, the issuer is unlikely to have a reliable estimate regarding the number of shareholders that will request copies of the proxy materials, particularly in the issuer's first year of reliance on the ''notice and access'' model. The issuer would have to maintain or prepare a sufficient supply of paper copies to satisfy all shareholder requests for paper copies. Thus, at least in the first year, when the issuer does not have previous experience with this model, it may have to print an excessive number of paper copies. Should we consider any procedures to mitigate this possibility? If so, what types of procedures would be appropriate?

B. The Role of Intermediaries

1. Background

The process of distributing proxy materials to beneficial owners is considerably more complicated than direct delivery of the materials by an issuer to its record holders.[70] The proxy rules contain three rules, Exchange Act Rule 14a–13, Rule 14b–1 and Rule 14b–2, referred to collectively as the ''shareholder communications rules,'' that impose obligations on issuers and intermediaries to ensure that beneficial owners receive proxy materials and are given the opportunity to vote. Basically, these rules require issuers to send their proxy materials to intermediaries for forwarding to the beneficial owners.

Exchange Act Rule 14b–1 sets forth the obligations of registered brokers and dealers in connection with the prompt forwarding of certain issuer communications to beneficial owners. Rule 14b–2 sets forth similar obligations of banks, associations, and other entities that exercise fiduciary powers. Under these rules, upon request by the issuer, these intermediaries are required to indicate to the issuer within seven business days of receiving the request:

• The approximate number of customers of the intermediary that are beneficial owners of the issuer that are held of record by the intermediary;

• If the issuer has indicated pursuant to Rule 14a–13(a)[71] or 14c–7(a)[72] that it will distribute the annual report to security holders to beneficial owners who have not objected to disclosure to the issuer of their names, addresses, and securities positions, the number of

[69] See proposed Rule 14a–3(g)(7).

[70] The discussion in this section of ''beneficial owners'' refers to beneficial owners whose names and addresses do not appear directly in issuers' stock registers because they hold their stock through a broker, bank, trustee, or similar intermediary.

[71] 17 CFR 240.14a–13(a).

[72] 17 CFR 240.14c–7(a).

beneficial owners who have objected to such disclosure;[73] and

• The identity of any agents of the intermediary acting on the intermediary's behalf to fulfill its obligations under the rule.

Pursuant to Rules 14b–1 and 14b–2, within five business days of receiving proxy materials from the issuer, the intermediary must forward the materials to its beneficial owner customers who will not receive those materials directly from the issuer pursuant to Rule 14a–13(c)[74] or Rule 14c–7(c).[75] Beneficial owners typically do not execute proxy cards because, under most state laws, only the record owner (*i.e.,* the intermediary) has the authority to vote on matters before the shareholders. As a result, intermediaries forward the proxy materials along with a request for voting instructions. The request for voting instructions is similar to the proxy card, but is prepared by the intermediary instead of the issuer and the beneficial owner returns his or her voting instructions to the intermediary rather than to the issuer or independent vote tabulator. The intermediary is required to vote the beneficial owner's shares in accordance with the owner's voting instructions when formally executing the proxy card.[76] The intermediary then returns the proxy card to the issuer or independent vote tabulator.

2. Proposed Amendments

Under the proposed amendments, an intermediary may follow the ''notice and access'' model only if the issuer requests it to do so and, in such cases, must follow that model. The proposed amendments would revise Rules 14b–1 and 14b–2 to require brokers, banks, and similar intermediaries, at the request of an issuer, to furnish proxy materials, including the Notice of Internet Availability of Proxy Materials, to beneficial owners of the issuer's securities based on the ''notice and access'' model.[77]

An issuer or other soliciting person relying on the ''notice and access'' model would have to deliver a sufficient number of copies of its Notice of Internet Availability of Proxy Materials to intermediaries at least five business days prior to the proposed deadline for furnishing the Notice of Internet Availability of Proxy Materials.[78] Thereafter, the process for forwarding the Notice by intermediaries to their beneficial owner customers would be similar to the current process by which intermediaries forward proxy materials to beneficial owners. The intermediary would be required to forward the Notice to beneficial owners within five business days after receipt of the Notice from the issuer or other soliciting person.

At its option, the intermediary may either include its request for voting instructions with the Notice of Internet Availability of Proxy Materials being furnished to the beneficial owners or post that request on an Internet Web site.[79] If the intermediary chooses to post the request for voting instructions on its own Web site, the intermediary would need to post the issuer's proxy statement, and all other proxy-related material from the issuer's Web site other than the proxy card, on its own Web site so that shareholders would have access to those materials when they access the request for voting instructions. The intermediary also would need to direct beneficial owners to that Web site rather than the issuer's Web site. It could do so either by supplementing the issuer's Notice to inform beneficial owners how to access the Web site or by replacing the issuer's Notice with its own Notice. If the intermediary replaces the issuer's Notice, it would have to make sure that all of the information required to appear in the Notice is included in its own Notice, with appropriate modifications (*e.g.,* references to the request for voting instructions rather than the proxy card). The intermediary would need to make it clear to its beneficial owner customers in its own Notice or in its supplement to the issuer's Notice that they should return voting instructions to the intermediary, rather than execute a proxy card and return it to the issuer or tabulator.

Conversely, the same version of the Notice of Internet Availability of Proxy Materials generally could be delivered to both registered holders and beneficial owners, if the proxy card is delivered together with the Notice to registered holders and a request for voting instructions is delivered together with the Notice to beneficial owners. This would avoid the need for the intermediary to either prepare its own tailored Notice for delivery to its beneficial owner customers, or supplement the issuer's Notice.

In summary, the proposed amendments would impose the following responsibilities on intermediaries that are requested to follow the ''notice and access'' model:

• The intermediary would have to forward the issuer's Notice of Internet Availability of Proxy Materials to beneficial owners, unless it prepares its own Notice;

• If the issuer posts its proxy card on the Web site, the intermediary would have to supplement the issuer's Notice of Internet Availability of Proxy Materials or create and send its own Notice to clarify how beneficial owners can return their voting instructions;

• If the intermediary chooses to post its request for voting instructions on an Internet Web site, it would have to maintain an Internet Web site for posting that request for voting instructions, as well as the issuer's proxy materials, other than the proxy card;

• If the intermediary chooses not to post its request for voting instructions on an Internet Web site, it would have to prepare and send, with the Notice, a copy of the intermediary's request for voting instructions; and

• The intermediary would have to request and forward a copy of the proxy materials from the issuer in response to requests from its beneficial shareholder customers.

Under the proposed ''notice and access'' model, a beneficial owner could request delivery of a copy of the proxy materials from either the company or the intermediary, at the beneficial owner's option. A concern that may stem from a shareholder requesting the materials directly from the issuer is that a beneficial owner who has objected to, or not consented to, disclosure of his or her identity to the issuer (commonly referred to as an ''objecting beneficial owner'' or ''OBO'') would have to reveal his or her identity to the issuer in connection with a request for a copy of the proxy materials. Therefore, under the proposed rules, a beneficial owner could request a copy of the proxy materials from his or her intermediary, rather than the issuer. If a beneficial owner requests his or her intermediary to obtain copies of the materials, the intermediary would be required to request such copies from the issuer

[73] In the case of bank intermediaries, Rule 14b–2 requires a bank to disclose the number of customers with accounts opened on or before December 28, 1986, who gave affirmative consent to disclosure to the issuer and the number of customers with accounts opened after December 28, 1986, who did not object to such disclosure.

[74] 17 CFR 240.14a–13(c).

[75] 17 CFR 240.14c–7(c).

[76] See Rule 14b–2(b)(3) [17 CFR 240.14b–2(b)(3)].

[77] See proposed amendments to Exchange Act Rules 14b–1 and 14b–2. If an issuer does not request intermediaries to follow the proposed ''notice and access'' model, an intermediary could, on its own initiative, continue to rely on any existing permitted method of furnishing proxy materials to its beneficial owner customers.

[78] For issuers, this deadline would be 30 days prior to the shareholder meeting. For soliciting persons other than the issuer, this deadline would be the later of 30 days prior to the shareholder meeting or 10 days after the registrant first sends out its proxy solicitation.

[79] See proposed amendments to Exchange Act Rules 14b–1 and 14b–2.

within two business days of receiving the request from the beneficial owner. The intermediary also would have to forward the materials to the beneficial owners within two days after receipt from the issuer. As proposed, the intermediary would be allowed to charge the issuer the cost of forwarding such materials.

Request for Comment

• Should the proposed alternative model be limited to the furnishing of proxy materials by issuers to their record holders? Is it appropriate to allow the issuer to compel the intermediary to undertake the obligations that would be required under the proposed model? Are there practical problems with an issuer's reliance on the proposed ''notice and access'' model in connection with the furnishing of proxy materials and requests for voting instructions to beneficial owners?

• Should intermediaries or their agents be allowed to use the ''notice and access'' model regardless of whether the issuer chooses to furnish documents to its record shareholders in reliance on the proposed model? If so, should the issuer have to supply copies of the proxy materials to intermediaries for forwarding to beneficial owners who request them?

• Should intermediaries be able to use e-mail addresses that they have obtained from their customers for electronic delivery of the Notice of Internet Availability of Proxy Materials even if their customers have not specifically consented to the electronic delivery of proxy materials?

• Is the proposed requirement that the issuer or soliciting party deliver a sufficient number of copies of its Notice of Internet Availability of Proxy Materials to intermediaries at least five business days prior to the proposed deadline for furnishing the Notice of Internet Availability of Proxy Materials appropriate? Would this proposed requirement present special difficulties for a soliciting person other than the issuer, given the differences in the timing requirements for delivery of the Notice if the soliciting person is reacting to the issuer's solicitation?

• Is it appropriate to require the issuer to send copies of the proxy materials to beneficial owners who request copies directly from the issuer? Should the intermediary be required to estimate the number of copies that it is likely to need to satisfy requests from its beneficial owner customers? If so, would the intermediary have a reasonable basis to make such an estimate? Would the flow of copies from issuer to intermediary to beneficial owner be overly time-consuming? Should intermediaries be allotted less time to forward e-mail copies of the proxy materials?

• The issuer might be able to trace the identity of anyone accessing the Web site on which the proxy materials are posted through the use of ''cookies'' or other technology. Should the rules require that the proxy materials to be accessed by beneficial owners be posted on a Web site that protects the confidentiality of an OBO's identity? If so, should this Web site be separate from the issuer's Web site? Are there other ways to protect the identities of OBOs without placing an excessive burden on issuers or intermediaries?

• Should issuers be permitted to request proof of a person's status as a beneficial owner when they receive requests for copies of their proxy materials? Should we require issuers to provide copies to all persons requesting copies? Keeping in mind that only shareholders would receive the Notice, is there a possibility that the issuer would be unduly burdened by excessive requests for copies?

• Is there a concern that beneficial owners may erroneously attempt to execute a proxy card if the issuer posts its proxy card on the same Internet Web site as the proxy statement? Should the rules separate the voting mechanisms for registered holders and beneficial owners to prevent confusion? Should we require intermediaries to establish their own Web sites to post proxy materials to help prevent any such confusion? Is it likely that intermediaries or third parties will develop Web sites to facilitate use of the ''notice and access'' model?

• Is it appropriate to permit intermediaries to charge the issuer for forwarding copies? If so, what would be an appropriate fee? Should the beneficial owner desiring to maintain anonymity bear this cost? Should the beneficial owner's intermediary instead bear this cost? Is it reasonable for intermediaries (or their agents) to continue to collect an incentive fee from issuers for each set of proxy materials that they deliver electronically rather than in paper if the Commission adopts the proposed ''notice and access model''? [80] Should the incentive fee be a one-time charge (assessed only the first time a paper copy is suppressed) or a recurring fee?

• Should the self-regulatory organizations establish new fees that an intermediary may charge as reasonable for services rendered to an issuer when the issuer relies on the proposed ''notice and access'' model, if adopted? If so, what type of fee schedule would be appropriate?

C. Proposed ''Notice and Access'' Model for Furnishing of Internet Proxy Materials by Soliciting Persons Other Than the Issuer

Under the proposed rules, a person other than the issuer who undertakes his or her own proxy solicitation also would be able to rely on the proposed ''notice and access'' model.[81] This situation typically would occur in the context of a proxy contest between a shareholder or other party and management. We anticipate that the proposed rules, if adopted, could provide an alternative that may significantly decrease the cost of a proxy solicitation, given the potential decrease in printing and mailing costs. We also believe that the same arguments that support modifying the existing framework to facilitate an alternative dissemination option for issuers apply equally to soliciting persons other than issuers. There are, however, several important differences in the way the proposed rules would affect soliciting persons other than the issuer that are described below.

Request for Comment

• Should soliciting persons other than the issuer be able to take advantage of the ''notice and access'' model? Why or why not?

1. Mechanics of Proxy Solicitations by Persons Other Than the Issuer

The current proxy rules treat persons other than the issuer differently from the issuer in a significant respect regarding the provision of information to shareholders about intended corporate actions. Specifically, an issuer must furnish either a proxy statement, if the issuer is soliciting proxies or consents from shareholders, or an information statement pursuant to Section 14(c) of the Exchange Act [82] regarding shareholder meetings where

[80] For example, the NYSE and some other self-regulatory organizations maintain a schedule of fees that issuers must pay for forwarding of their proxy materials by their member brokers to the brokers' beneficial owner customers. As an example, the NYSE's schedule includes an incentive fee that brokers may collect for eliminating the need to send materials in paper format. For proxy materials, this fee is $0.25 per account for issuers whose shares are held in at least 200,000 beneficial owners' accounts and $0.50 per account for issuers whose shares are held in fewer than 200,000 beneficial owners' accounts. See NYSE Rule 451. Other self-regulatory organizations have adopted similar rules.

[81] See proposed Rule 14a–3(g)(8).

[82] 15 U.S.C. 78n(c).

corporate action is to be taken but no proxy authority or consent is sought.

Soliciting persons other than the issuer are not subject to the requirements of Section 14(c). Thus, unlike the issuer, they have no obligation to furnish an information statement to persons from whom no proxy authority is sought. Soliciting persons may use this mechanism to limit the cost of a solicitation by soliciting proxies only from a select group of shareholders with large holdings. These distinctions from the manner in which issuers must conduct proxy solicitations lead to a variety of possible ways that a person other than the issuer may conduct a proxy contest, some of which are not available to an issuer.

As proposed, a soliciting person other than the issuer may follow the same procedures as the issuer. In particular, it may furnish a Notice and post the proxy statement on an Internet Web site. It also would have the choice of either furnishing the proxy card with the Notice or posting the proxy card with the proxy statement. However, because such a person is not obligated to solicit everyone, it may revise its Notice to clearly explain that it will not provide a copy to any shareholder that requests a copy. In this case, the Notice must clearly state that the person is soliciting only shareholders who are willing to access the proxy materials via the Internet Web site posting.

A soliciting person other than the issuer also could choose to not furnish a Notice to any shareholder. Rather, it may simply post its proxy materials, including the proxy card, on a publicly accessible Internet Web site and direct persons to that Web site by means of communications under Rule 14a–12. Under this scenario, all persons accessing the proxy card also would have accessed the Internet Web site on which the proxy statement was located.

In summary, if we were to adopt the proposed alternative model, a person other than the issuer could conduct a proxy contest in the following manners:

- Furnish a proxy statement and proxy card under existing permitted methods;
- Furnish a Notice and proxy card together, and through the same medium, and post the proxy statement on a Web site;
- Furnish a Notice and post the proxy statement and proxy card together on a Web site; or
- Do not furnish a Notice and post the proxy statement and proxy card together on a Web site.

A soliciting person may use any combination of these options and may rely on Rule 14a–12 to issue soliciting materials prior to furnishing a proxy statement under any of these scenarios. Under the last three options, a soliciting person other than the issuer may either undertake to furnish shareholders with copies upon request, or it may clearly indicate in the Notice, or in the last case, on the Internet Web site, that it will not provide copies upon request and that the solicitation is conditioned on a shareholder accepting the proxy materials via Internet Web site access.

As noted above, such person may effect a solicitation prior to furnishing a proxy statement pursuant to Rule 14a–12. However, if a soliciting person uses a medium such as a press release under Rule 14a–12, it would incur an obligation to furnish a proxy statement at the time a proxy card is provided. In view of the fact that such a person is not obligated to solicit all persons receiving that communication, delivery of a Notice would be required only if the soliciting person sends a proxy card to a shareholder that is not accompanied by a proxy statement. With respect to shareholders not receiving a proxy card from the soliciting person, but who are directed to the Internet Web site by the Rule 14a–12 communication and choose to execute a proxy in favor of the soliciting person, the proxy statement would have accompanied, or preceded, the proxy card. A person receiving such a request from a shareholder may assume that the shareholder has had access to the proxy statement.[83] Thus, a soliciting person, other than the issuer, could effect a widespread solicitation of proxies without delivering any Notices at all, provided that it does not furnish or provide a means of obtaining a proxy card except on the Web site where its proxy materials are posted.

Request for Comment

- Should the rules, as proposed, permit a soliciting person to furnish a proxy card and the Notice of Internet Availability of Proxy Materials to shareholders separately and through the use of different media, subject to the proposed limitations? If not, why not?
- Would it be more appropriate to require that the proxy card always be furnished together with and through the same delivery means as the Schedule 14A proxy statement? For example:
  - If the proxy card was furnished electronically, the proxy statement also would have to be furnished together with the proxy card electronically, regardless of the means by which the Notice of Internet Availability of Proxy Materials was furnished; or
  - If the proxy card was furnished in paper, the proxy statement also would have to be furnished together with the proxy card in paper, regardless of the means by which the Notice of Internet Availability of Proxy Materials was furnished.

Conversely, should we require that the proxy card always accompany the Notice, regardless of the manner in which the proxy statement was furnished? Please provide support for your position.

- Would it be more appropriate to require that the proxy card be furnished together with and by the same means as the proxy statement, regardless of the means by which the Notice of Internet Availability of Proxy Materials is furnished, unless Rule 14a–6 would permit the proxy materials to be filed in definitive form only, or unless the meeting addresses only those matters listed in Rule 14a–6, notwithstanding the exclusion in that rule regarding solicitations in opposition? In either of those situations, would it be appropriate to permit or require the Notice of Internet Availability of Proxy Materials and the proxy card to be furnished together and by the same means even if the proxy materials were furnished separately and/or through a different means (for example, the Notice of Internet Availability of Proxy Materials and proxy card furnished together in paper and the proxy statement posted on an Internet Web site)?
- Under the proposed model, how would a shareholder that is not solicited directly but goes to the soliciting person's Web site vote his or her shares? Should the soliciting person be required, upon request from such shareholder, to provide the shareholder with a means for voting, for example, by providing the shareholder with a personal identification number or similar unique identifier and form to submit a proxy or voting instructions? Should we adopt rules addressing such voting systems to promote more accurate voting results?
- Under certain exchange rules,[84] a broker is precluded from exercising its voting discretion for shares for which no voting instructions are received (commonly referred to as ''broker non-votes'') on several types of non-routine

[83] However, if the press release contains information on how to obtain a proxy card by a means other than at the Web site where the proxy statement will be located along with the proxy card, the soliciting person must ensure that a shareholder is furnished with the proxy statement concurrently, either by furnishing the proxy statement with the proxy card or by posting the proxy statement on a publicly accessible Web site and furnishing the Notice of Internet Availability of Proxy Materials with the proxy card.

[84] See, *e.g.,* NYSE Rule 452.

matters listed in the rules. Matters that are the subject of a contest are considered non-routine. Staff at the exchanges determine whether a contest exists for purposes of the discretionary broker voting rule based on exchange rules and interpretations. For example, a NYSE interpretation suggests that a person other than the issuer must solicit at least 50% of the issuer's shareholders for a contest to exist under its discretionary broker voting rule. Should the widespread accessibility of a soliciting person's proxy statement and card affect current exchange interpretations?

• Should the proposed rules permit, as the current rules do, a soliciting person other than the issuer to limit its proxy solicitation to shareholders that are willing to access the proxy materials electronically, thus eliminating any need for the soliciting shareholder to send copies? Is this concept of a conditional proxy solicitation feasible? Should such conditional solicitations be limited only to instances where the soliciting person posts the proxy card on an Internet Web site and does not send a copy of the proxy card with the Notice, to ensure that only shareholders who can access the proxy materials can vote?

2. Timeframe for Sending Notice of Internet Availability of Proxy Materials

Currently, soliciting persons generally have no required timeframe regarding the furnishing of proxy materials other than the time necessary to ensure staff review of those materials.[85] As we stated earlier, the proposed 30-day timeframe for the Notice is designed to provide sufficient time for a shareholder to request a copy of the proxy materials, receive that copy, and review it before voting. However, because soliciting persons other than the issuer need not furnish proxy materials to all shareholders, the 30-day timeframe is unnecessary if that soliciting person is conducting an electronic-only solicitation. Thus, provided that the soliciting person complies with all other proxy timing rules, it need not comply with the 30-day timeframe requirement in order to effect an electronic-only proxy solicitation.

If the soliciting person chooses to undertake to provide copies of the proxy materials to shareholders upon request, shareholders should have sufficient time to request, receive, and review those materials prior to voting. However, a solicitation in opposition to the issuer's proposals at a shareholder meeting often is initiated in response to the issuer's proxy statement. As a result, we believe that it may be unfair to impose the same 30-day timeframe on soliciting persons other than the issuer. Therefore, we are proposing that a soliciting person other than the issuer that is following the ''notice and access'' model, but not conducting an electronic-only solicitation, must send out its Notice prior to the later of (1) 30 days prior to the meeting; or (2) ten days after the issuer first sends out its proxy solicitation.

Request for Comment

• A proxy contest often involves a number of communications from both the issuer and the other soliciting person and time may be at a premium in such situations. Would the proposed model provide sufficient time for shareholders who desire copies to obtain materials from a soliciting person other than the issuer in the context of a proxy contest? We note that it would take more time for the delivery of proxy materials to beneficial owners through intermediaries than for delivery of the materials directly by the soliciting person to record owners.

• Should a soliciting person other than the issuer conducting an electronic-only solicitation be required to comply with a specified timeframe for sending its materials? If so, what should that timeframe be?

• Should a soliciting person other than the issuer that is following the ''notice and access'' model, but not conducting an electronic-only solicitation, be required to provide the materials to solicited shareholders within the proposed timeframe? Would ten days after the issuer first sends its solicitation be sufficient time for a soliciting person other than the issuer to prepare its soliciting materials? Would a shorter period, such as five days or five business days, be sufficient?

3. Content of the Notice of Internet Availability of Proxy Materials of a Soliciting Person Other Than the Issuer

The content of the Notice of Internet Availability of Proxy Materials sent by a soliciting person other than the issuer could be different from that of the issuer. First, if a soliciting person other than the issuer chooses to conduct an electronic-only solicitation, it need not provide instructions on how to obtain a copy. In lieu of such disclosure, the legend on the Notice must clearly state that the proxy solicitation is contingent on the shareholder being willing to accept access to the proxy statement electronically.

Also, a solicitation in opposition may be launched before the issuer has sent its own proxy statement. Thus, the full agenda may not be known at the time that the opposing person sends its Notice. In such a case, the person soliciting in opposition would be required to include the agenda items in the Notice only to the extent known.

Finally, there may be circumstances in which the person soliciting in opposition may provide a partial proxy card, that is, a proxy card soliciting proxy authority only for the agenda items in which the soliciting person is interested. Typically, such a proxy would revoke any previous proxy granted and, as is the case today, the shareholder may lose his or her ability to vote on matters other than those presented on the soliciting person's card. To prevent a shareholder from unknowingly invalidating his or her vote on those other matters, a person soliciting in opposition that sends such a card would be required to indicate clearly on its proxy card that execution of that card may invalidate the shareholder's earlier vote on the other matters reflected on the issuer's proxy card.

Request for Comment

• Are there other instances when the Notice of a soliciting person other than the issuer should differ from the issuer's Notice?

• Should the rule require specific language that a soliciting person other than the issuer must insert in its Notice under these conditions? If so, what language would be appropriate?

• If the soliciting person is not aware of the full agenda for the meeting when it sends its Notice, should it be required to disclose on the Notice that the proxy card and Notice may not contain all matters to be acted upon? Should we require such a soliciting person to amend its proxy card to contain all items in the agenda?

• Is there another way to ensure that shareholders learn that executing a partial proxy card would invalidate their votes on other matters? If so, what additional requirements would be necessary?

4. Shareholder Lists and the Furnishing of Proxy Materials by the Issuer

Exchange Act Rule 14a–7 sets forth the obligation of issuers either to provide a shareholder list to a requesting shareholder or to send the shareholder's proxy materials on the shareholder's behalf. That rule provides

[85] An exception to this rule applies when a company is incorporating information by reference from another filing in a joint proxy statement-prospectus, in which case the prospectus must be sent to shareholders no later than 20 business days prior to the meeting. See General Instruction A.2 to Form S–4.

that the issuer has the option to provide the list or send the shareholder's materials, except when the issuer is soliciting proxies in connection with a going-private transaction or a roll-up transaction.[86] As proposed, if the issuer is providing its shareholder list to a soliciting person, the issuer would be required to include any electronic delivery information that it already has obtained from shareholders, including information about shareholders that have affirmatively consented to electronic delivery as well as shareholders that have requested copies of the issuer's proxy materials if the issuer is relying on the ''notice and access'' model.[87]

If the issuer is sending the soliciting person's proxy materials, the proposed amendments would require the issuer to share the benefit of any affirmative consent to electronic delivery of proxy statements that it has obtained from shareholders. If the soliciting person requests that the issuer follow the ''notice and access'' model, the soliciting person would be responsible for providing the issuer with copies of its proxy card and/or Notice of Internet Availability of Proxy Materials, if the soliciting person chooses to deliver the proxy card and/or the Notice in paper. In that case, the issuer would have to send the soliciting person's proxy card and/or Notice of Internet Availability of Proxy Materials with reasonable promptness after receipt from the soliciting person. An issuer could not decide on its own whether to send a soliciting person's materials in paper or electronically.

Request for Comment

- Under the ''notice and access'' model, should the issuer be required to share affirmative consents to electronic delivery that the issuer already has obtained from its shareholders with persons conducting their own proxy solicitations? Under the ''notice and access'' model, should the issuer be required to share information with soliciting persons regarding shareholders who have requested copies?
- If the issuer chooses to send proxy materials on behalf of a soliciting person, should the soliciting person have the right to direct the issuer to comply with a particular means of doing so, such as the ''notice and access'' model?
- If the issuer relied on the ''notice and access'' model in a previous proxy season, should it be required to share information with a soliciting person about the number of shareholders who requested copies in a past season?

5. The Role of Intermediaries

Intermediaries generally furnish proxy materials to beneficial owners on behalf of soliciting persons other than the issuer under the conditions set forth in Exchange Act Rules 14b–1 and 14b–2.[88] Although intermediaries historically have transmitted a soliciting person's proxy materials in reliance on the procedures set forth in Rules 14b–1 and 14b–2, these two rules do not explicitly address an intermediary's obligations with respect to the forwarding of a soliciting person's proxy materials. The proposed amendments would clarify that intermediaries are obligated to send proxy materials on behalf of soliciting persons other than the issuer.

Request for Comment

- Should we revise Rules 14b–1 and 14b–2 to explicitly require intermediaries to send proxy or other soliciting materials on behalf of soliciting persons other than issuers? Are such revisions necessary or appropriate even if we do not adopt the ''notice and access'' proposal?

D. Business Combination Transactions

We are proposing that the ''notice and access'' model not be available with regard to proxy materials related to a business combination transaction, which includes transactions covered by Rule 165 under the Securities Act,[89] as well as transactions for cash consideration requiring disclosure under Item 14 of Schedule 14A. Business combination transactions constitute highly extraordinary events for some companies and frequently involve an offering of securities that must be registered under the Securities Act and require delivery of the prospectus.[90] They also typically involve proxy statements of considerable length and complexity. Thus, we are proposing that the rules would not apply in connection with a business combination transaction.

Request for Comment

- Should the proposed ''notice and access'' model be available for transactions involving business combination transactions? Why or why not?
- Business combination transactions sometimes are the object of a proxy contest. Would this prohibition unnecessarily harm the ability of persons opposed to the transaction to undertake an efficient contest?
- Exchange Act Rule 13e–3 [91] imposes certain requirements on issuers that are undertaking what are commonly referred to as ''going-private transactions'' or ''Rule 13e–3 transactions.'' Should the ''notice and access'' model not be available with regard to proxy materials related to those transactions?
- Should the ''notice and access'' model not be available in other types of transactions? For example, should it apply to roll-up transactions, liquidations of assets, or reverse stock splits?
- Are there other matters to which the proposed ''notice and access'' model should not apply? For registered investment companies, are there any types of matters (*e.g.*, changes in investment adviser or management and distribution fee increases) to which the proposed model should not apply?

IV. Conforming and Correcting Revisions to the Proxy Rules

The proposed rules reflect numerous amendments to terms used in the current proxy rules to explicitly accomodate the ''notice and access'' model. The changes are as follows:

- We propose to substitute the term ''send'' and other tenses of the verb for the term ''mail'' and its other tenses to avoid any misunderstanding that ''mail'' means only paper delivery through the U.S. mail system.[92]
- We propose to clarify that the term ''address'' includes an electronic mail address.[93]

Furthermore, we propose to clarify the use of the term ''annual report(s)'' in the proxy rules by changing all references to either ''annual report(s) to

[86] See Exchange Act Rule 14a–7(b) [17 CFR 240.14a–7(b)]. If the issuer is soliciting proxies in connection with a going-private transaction or a roll-up transaction, the shareholder has the option to request the shareholder list or have the issuer send its materials.

[87] See proposed Note 3 to Exchange Act Rule 14a–7.

[88] See Randall S. Thomas & Catherine T. Dixon, Aranow & Einhorn on Proxy Contests for Corporate Control, at § 8.03(C) (3d ed. 2001).

[89] 17 CFR 230.165. This prohibition would extend to persons who solicit proxies that are not parties to the transaction and any proxy materials in opposition to the transaction.

[90] Such transactions were excluded from the provisions in our securities offering reform initiative. See Release No. 33–8591 (July 19, 2006) [70 FR 44271].

[91] 17 CFR 240.13e–3.

[92] Proposed Rules 14a–4(c)(1), 14a–8(e)(2), 14a–8(c)(3), 14a–8(m)(3), 14a–13(a)(5), 14a–13(c), 14b–1(c)(2)(ii), 14b–2(c)(2)(ii), 14c–5(a) and 14c–7(a)(5). Also Note 2 to proposed Rule 14a–13(a), Instruction 2 to paragraph (d)(2)(ii)(L) of Item 7 of proposed Rule 14a–101, Note 2 to proposed Rule 14c–7(a) and Instruction 1 to Item 4 of proposed Rule 14c–101.

[93] Proposed Rules 14a–7(f), 14a–13(e), 14b–1(a)(2) and 14b–2(a)(4).

security holders'' or ''annual report(s) on Form 10–K and/or Form 10–KSB,'' as appropriate.[94] Finally, we are proposing to update Rule 14a–2 and Forms 10–Q, 10–QSB, 10–K, 10–KSB, and N–SAR to update outdated references to Exchange Act Rule 14a–11, which the Commission rescinded in 1999.[95]

V. Paperwork Reduction Act

A. Background

The proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[96] We are submitting the proposals to the Office of Management and Budget for review in accordance with the PRA.[97] The proposals would not affect existing collections of information. The proposed Notice of Internet Availability of Proxy Materials, if adopted, would constitute a new collection of information under the Exchange Act to be used by issuers and other persons soliciting proxies to provide notice to shareholders that they are relying on the ''notice and access'' model with regard to the proxy materials referenced in the Notice.

The rules regarding the Notice would be adopted pursuant to the Exchange Act. The hours and costs associated with preparing, filing, and sending the Notice would constitute reporting and cost burdens imposed by that collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

B. Summary of Proposed Amendments

The proposed rules would apply only if an issuer or other soliciting person voluntarily chooses to furnish its proxy materials to shareholders electronically in reliance on the proposed alternative model. We do not know the number of issuers and other soliciting persons that will choose to take advantage of this alternative. However, in light of the significant cost savings that an issuer or other soliciting person may realize by furnishing its proxy materials under the alternative model, we expect that the alternative model would be used for most proxy solicitations. In addition, because we think that the proposals may reduce the cost of effecting a proxy contest, we expect that more persons may conduct proxy contests. We do not know the extent to which the number of proxy contests may increase if these amendments are adopted. We request comment and supporting empirical data, for purposes of the PRA, on the number of issuers and other persons that would choose to furnish their proxy materials in reliance on the proposed ''notice and access'' model.

Compliance with the proposed requirements would be mandatory only if an issuer chooses to use the proposed ''notice and access'' model to furnish its proxy materials to shareholders. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements would not be kept confidential. Also, under the proposals, a person other than the issuer has the option to effect a proxy solicitation under the ''notice and access'' model without preparing a Notice of Internet Availability of Proxy Materials, so long as the soliciting person does not deliver a proxy card or request for voting instructions to shareholders. We request comment on the extent to which soliciting persons other than the issuer would choose to conduct solicitations in this manner.

The proposed Notice of Internet Availability of Proxy Materials is required to include the following prominent legend in bold-face type and other information described below:

''Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting to Be Held on [insert meeting date].[98]

- This communication presents only an overview of the more complete proxy materials that are available to you on the Internet. We encourage you to access and review all of the important information contained in the proxy materials before voting.
- The [proxy statement] [information statement] [annual report to shareholders] [proxy card] are available at [Insert Web site address].
- If you want to receive a paper or e-mail copy of these documents, you must request one. There is no charge to you for requesting a copy. Please make your request for a copy as instructed below on or before [Insert a date that is two weeks or more before the meeting date] to facilitate timely delivery. If you hold your shares through a broker, bank, or other intermediary, you may request delivery of a copy of the proxy materials through that intermediary, but it likely will take longer to receive your materials through an intermediary than directly from the company.''
- The date, time, and location of the meeting or, if corporate action is to be taken by written consent, the earliest date on which the corporate action may be effected;
- A clear and impartial identification of each separate matter intended to be acted upon and the issuer's recommendations regarding those matters, but no supporting statements;
- A list of the materials being made available at the specified Web site; and
- (1) A toll-free telephone number and (2) an e-mail address where the shareholder can request a copy of the proxy materials.

All of this information is information that the issuer or other soliciting person would have readily available because it determines matters such as the date of the shareholder meeting and information that shareholders can use to request copies of the proxy materials. The Notice may be combined with any notice of shareholder meeting required by state law. We estimate the annual burdens that would be required to prepare and transmit a Notice of Internet Availability of Proxy Materials to be approximately 1.5 reporting hours. We estimate that 75% of the burden is prepared by the company and that 25% of the burden is prepared by outside counsel retained by the company at an average cost of approximately $300 per hour.[99] We received 7,301 filings on Schedule 14A and 681 filings on Schedule 14C during our 2005 fiscal year. These numbers include filings related to annual and special meetings prepared by issuers and other soliciting persons, but not those related to business combination transactions because the proposals exclude those transactions. Assuming that all issuers

[94] Proposed Rules 14a–3(b)(1), 14a–3(b)(10), 14a–3(b)(13), 14a–3(e)(1)(i), 14a–3(e)(1)(i)(A), 14a–3(e)(1)(i)(B), 14a–3(e)(1)(i)(C), 14a–3(e)(1)(i)(E), 14a–3(e)(1)(ii)(A), 14a–3(e)(1)(ii)(B)(*2*), 14a–3(e)(1)(ii)(B)(*2*)(*ii*), 14a–3(e)(1)(ii)(B)(*2*)(*iii*), 14a–3(e)(1)(ii)(B)(*3*), 14a–3(e)(1)(iii), 14a–3(e)(2), 14a–3(e)(2)(i), 14a–3(e)(2)(ii), 14a–12(c)(1), 14b–1(b)(2), 14b–1(c)(2)(ii), 14b–1(c)(3), 14b–2(b)(3), 14b–2(c)(2)(ii), 14b–2(c)(4), 14c–2(a)(2), 14c–3(a)(1) and 14c–3(c). Also Note to paragraph (e)(1)(i)(B) of proposed Rule 14a–3, Note D(3) to proposed Rule 14a–101, Note G(1) to proposed Rule 14a–101, Instruction 1 to paragraph (d)(2)(ii)(L) of Item 7 of proposed Rule 14a–101, paragraph (e)(2) of Item 14 of proposed Rule 14a–101, Item 23 of proposed Rule 14a–101, paragraph (a), (b), (c) and (d) of Item 23 to proposed Rule 14a–101, Note 1 to paragraph (b)(2) of proposed Rule 14b–1, Note 1 to paragraph (b)(3) of proposed Rule 14b–2, section heading to proposed Rule 14c–3, Item 5 of proposed Rule 14c–101 and paragraph (a), (b), (c) and (d) of Item 5 of proposed Rule 14c–101.

[95] See Release No. 33–7760 (Oct. 22, 1999) [64 FR 61408].

[96] 44 U.S.C. 3501 *et seq.*

[97] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[98] Appropriate changes may be made if the issuer is providing an information statement pursuant to Regulation 14C or seeking to effect a corporate action by written consent.

[99] For convenience, the estimated PRA hour burdens have been rounded to the nearest whole number, and the estimated PRA cost burdens have been rounded to the nearest $100. In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $300 as the cost of outside professionals that assist issuers and security holders (or security holder groups) in preparing these disclosures.

and other soliciting persons elected to follow the proposed ''notice and access'' model, we would expect 7,982 Notices of Internet Availability of Proxy Materials to be filed annually.[100] We estimate that the total annual reporting burden would be approximately 8,979 hours [101] and that the annual cost would be approximately $897,900 [102] for the services of outside professionals.

The above estimates are conservative because there is no reliable way to predict how many issuers or other soliciting persons will choose to furnish proxy materials pursuant to the proposed amendments. We request comment and supporting empirical data on the number of issuers and other soliciting persons that would choose to furnish proxy materials using the proposed ''notice and access'' model and the burden and cost of preparing and sending the Notices necessary to comply with the proposed model. We also request comment and supporting empirical data on the current cost of sending copies of proxy materials, the cost savings expected as a result of furnishing proxy materials under the proposed alternative model, and the number or percentage of shareholders who would request copies of these materials. Finally, we request comment on the expected increase, if any, of the number of proxy contests that would be conducted by soliciting persons other than the issuer if the Commission adopts the proposals.

C. Solicitation of Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we solicit comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) evaluate the accuracy of our estimate of the burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, with reference to File No. S7–10–05. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–10–05, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Cost-Benefit Analysis

A. Background

We are proposing revisions to the proxy rules under the Exchange Act to enable issuers to take advantage of technological advances in recent years to more efficiently furnish proxy materials to shareholders. We expect that these proposals, if adopted, may lead to significant cost reduction for proxy solicitations. The costs of issuer solicitations ultimately are borne by shareholders.

B. Summary of Proposals

The proposals provide an alternative ''notice and access'' model that would permit an issuer to furnish proxy materials by posting them on a specified, publicly-accessible Internet Web site (other than the Commission's EDGAR Web site) and providing shareholders with a notice informing them that the materials are available and explaining how to access them. Under this alternative model, shareholders may request copies of the proxy materials from the issuer.

Issuers would be able to request intermediaries to follow similar procedures to forward proxy materials to beneficial owners. In addition, shareholders and other persons conducting their own proxy solicitations may follow the alternative model, permitting them to rely on the amendments under the same general requirements that would apply to issuers.

C. Benefits

Possible benefits of the proposed amendments include the following: (1) More rapid dissemination of proxy information to shareholders over the Internet; (2) reduced printing and mailing costs for issuers and their shareholders; and (3) reduced costs for other soliciting parties engaging in proxy contests. We expect potential cost reductions in printing and mailing and a possible decrease in the costs associated with proxy contests to be the most significant economic benefits.

Automatic Data Processing, Inc. (''ADP'') handles the vast majority of proxy mailings to beneficial owners.[103] During the 2005 proxy season, ADP handled 3,596 distributions of proxy materials to shareholders, representing a total of approximately 152.3 million items of proxy material processed. Currently, issuers typically prepare and print paper copies to accommodate all record and beneficial holders who do not consent to electronic delivery. For each paper copy, we understand that average postage is approximately $0.95 and average printing and paper costs are approximately $5.00.

ADP estimates that, during the 2005 proxy season,[104] over 62.3 million proxy material mailings were suppressed through a variety of means, including householding and existing electronic delivery methods. During the 2005 proxy season, this resulted in a savings of almost $371 million to issuers. During that season, ADP mailed 90 million paper proxy items to beneficial owners. Based on this number, we estimate that issuers and other soliciting persons spent, in the aggregate, $535.5 million in postage and printing fees alone to distribute paper proxy materials.[105] These numbers reflect the cost of approximately one-third of all mailings conducted by ADP in 2005. The data we have reflects only 3,596, or 30%, of the total 12,304 proxy mailings processed by ADP from May 1, 2004 through May 1, 2005. We do not have data on the size of the mailings performed outside of the 2005 proxy season.

[100] 7,301 notices for 14A filers + 681 notices for 14C filers = 7,982 total notices.

[101] 7,982 notices × 1.5 hours per notice × .75 = 8,980 hours.

[102] 7,982 notices × $300/hr × 1.5 hr/notice × .25 = $897,975.

[103] Because mailings to record holders are handled by a wide variety of parties including transfer agents and issuers themselves, we do not have an aggregated estimate of the number of mailings to record holders during 2005. However, we expect savings per mailing would roughly correspond to savings with respect to beneficial owners.

[104] According to ADP data, the proxy season extends from February 15 to May 1, during which time nearly one-third of all proxy solicitations are conducted.

[105] 90 million mailings × $5.95/mailing = $535.5 million.

Although we expect the savings to be significant, the full potential for savings would be reduced by several factors. First, some issuers and other soliciting persons might not elect to follow the proposed model. Second, to the extent that some shareholders do not have access to the Internet or receive paper copies of proxy materials from the company, the savings in printing and mailing costs would be reduced.

Third, issuers likely will project the number of paper copies they need to print before all shareholders must decide whether they want to receive copies under the proposed rule. The requirement that issuers supply requesting shareholders with copies within two business days would limit issuers' ability to reduce printing costs by causing them to have to maintain inventories of paper copies. We expect that, in the first year after adoption of the proposed amendments, issuers would face the highest level of uncertainty about the continued use of paper proxy materials. We expect that, as issuers gain familiarity with the continued use of paper materials and as shareholders become more comfortable with receiving disclosures via the Internet, the number of paper copies will decline, as will issuers' tendency to print more copies than ultimately are requested. We do not currently have estimates for the number of paper copies of the proxy materials that would have to be furnished to shareholders, but we invite comments that would be useful in constructing such estimates.

Issuers may be able to use additional information about shareholder voting to reduce uncertainty about shareholder demand for paper materials. During the 2005 proxy season, only 44% of accounts were voted by beneficial owners. Thus, 56%, or 84.8 million accounts, did not return requests for voting instructions. However, shareholders not voting represented a disproportionately low percentage (31.5%) of shares held beneficially. These accounts represent a cost of approximately $504.6 million in postage and printing costs. In light of the fact that these shareholders chose not to vote, we suspect that a significant number of them would not request copies of the proxy materials. We further expect that issuers would take such data into account to increase cost savings beginning in the first year that they follow the proposed model.

The proposed amendments may reduce costs of persons other than the issuer conducting their own proxy solicitations. Under the proposed amendments, persons other than the issuer also could rely on the ''notice and access'' model but, unlike issuers, may not be required to deliver a Notice of Internet Availability of Proxy Materials to shareholders. Furthermore, persons other than the issuer would be able to limit the scope of proxy solicitations to shareholders who are willing to access proxy materials electronically. We expect that the flexibility afforded to persons other than the issuer under the proposed amendments would substantially reduce what has traditionally been viewed as the high cost of engaging in proxy contests, thereby increasing the effectiveness and efficiency of proxy contests as a corporate control mechanism.

Some of the benefits from the proposed amendments may arise from a reduction in the environmental costs of the proxy solicitation process. Currently, proxy solicitation involves the use of a significant amount of paper and printing ink. Paper production and consumption can adversely affect the environment, such as through its use of chemicals such as bleaching agents, printing ink (which contains toxic metals), and cleanup washes. To the extent that paper producers internalize these costs and the costs are reflected in the price of paper and other materials consumed during the proxy solicitation process, our evaluation of the benefits reflects the elimination of adverse environmental consequences under the proposed amendments.

The benefits from reducing the use of paper in the proxy solicitation process also depend on the extent to which shareholders choose to print their own paper copies of proxy materials after accessing them over the Internet. We invite comments and data to shed light on the extent to which the tendency of investors to request paper or print out their own paper copies may affect the benefits from reducing printing and paper usage under the proposal.

D. Costs

Issuers and other persons soliciting proxies will have to follow the proposed amendments, if adopted, only if they elect to furnish proxy materials pursuant to the ''notice and access'' model. No issuer or person soliciting a proxy will be required to furnish proxy materials under the ''notice and access'' model. Furthermore, under the proposed amendments, shareholders can request copies of the proxy materials. We expect that the availability of multiple options for furnishing proxy materials will limit the costs of the proposed amendments to issuers and shareholders by enabling such parties to avoid relatively expensive alternatives and to choose ones that are most efficient under particular circumstances.

Savings to issuers and other soliciting persons would be reduced by the cost of printing and sending Notices. If Notices are sent by mail, the mailing costs may vary widely among parties. Postage rates likely would vary from $0.0012 to $0.37 per Notice mailed, depending on numerous factors. Shareholders obtaining proxy materials online would incur any necessary costs associated with navigating to the Web site on which the materials are posted and locating the materials on the Web site. In addition, some shareholders may choose to print out the posted materials, which will entail paper and printing costs. We request comment on the magnitude of these potential costs and whether there are any other additional potential costs, including whether any such costs would affect different classes of shareholders differently.

The proposed amendments will require an intermediary such as a bank, broker-dealer, or other association to follow the ''notice and access'' model if an issuer so requests. An intermediary that follows the ''notice and access'' model will be required to forward the issuer's Notice of Internet Availability of Proxy Materials to beneficial owners, but it will be able to include the Notice along with a request for voting instructions. Since intermediaries already incur costs from delivering requests for voting instructions, we do not expect the involvement of intermediaries in forwarding the Notice to significantly affect the costs associated with the rule.

Under certain circumstances, an intermediary may need to post proxy materials and requests for voting instructions on its own Internet Web site and prepare its own notification to instruct beneficial owners to respond to the request for voting instructions rather than responding to the issuer via a proxy card. These undertakings may increase the costs to intermediaries. We solicit comment on the magnitude of such costs.

Under the ''notice and access'' model, a beneficial owner could request a copy of proxy materials from an intermediary rather than from the issuer. The costs to an intermediary of collecting and processing requests from beneficial owners may be significant, particularly if the intermediary receives the requests of beneficial owners associated with many different issuers that specify different methods of furnishing the proxy. We expect that these processing costs will be highest in the first year after the proposal adoption but will subsequently decline as intermediaries

develop the necessary systems and procedures and as beneficial owners increasingly become comfortable with accessing proxy materials online. We invite comments on the nature and magnitude of these processing costs and on whether smaller broker-dealers will be unable to take advantage of economies of scale in processing.

The proposed model would require only minimal added disclosures in the form of a Notice of Internet Availability of Proxy Materials to shareholders, informing them that the proxy materials are available at a specified Internet Web site. For purposes of the PRA, we estimate that the total added cost for the amendments, assuming every soliciting person, including issuers, elected to follow the proposed procedures, would be approximately $2,020,475.[106]

E. Request for Comments

We seek comments and empirical data on all aspects of this Cost-Benefit Analysis. Specifically, we ask the following:

- Would issuers be willing to furnish proxy materials pursuant to the proposed alternative model? If so, what proportion of issuers would be expected to follow the proposed alternative model?
- Would soliciting persons other than issuers be willing to furnish proxy materials pursuant to the proposed alternative model? If so, what proportion of these persons would be expected to follow the proposed alternative model?
- What added costs would issuers incur if they choose to follow the proposed alternative model? Of those costs, which would be one-time costs and which would be annual costs?
- What cost savings would issuers realize if they choose to follow the proposed alternative model? Of those savings, which would be one-time savings and which would be annual savings?
- Are there any other one-time or annual costs or benefits that we should consider?
- What proportion of shareholders would be expected to request paper copies? What proportion of beneficial owners would likely request paper copies from intermediaries rather than from issuers?
- What costs would intermediaries incur as a result of processing objecting beneficial owners' requests for proxy materials? Would smaller broker-dealers be precluded from taking advantage of economies of scale in processing such requests?
- Does the requirement that issuers provide copies of the proxy materials give rise to inefficiencies? Specifically, because requests for proxy materials might come over time, a bulk mailing method may not be available to issuers. Furthermore, under the proposals, issuers would have to deliver copies of the proxy materials by first class mail or equivalent means of delivery. To what degree would this increase the per-unit cost to the issuer?
- To what degree would the cost of proxy contests be reduced by these proposals? What are the other costs of such contests?
- What effect might these proposals have on shareholder participation in the proxy process? Would reducing the financial barriers to conducting proxy contests lead to improved corporate governance? Conversely, might parties use the proposals to conduct nuisance contests?
- Will the proposed amendments likely affect the ease of investor communications? What evidence related to this issue should we consider in evaluating the net benefit of the proposals?
- Would the proposals increase, reduce, or have no effect on the voting returns from shareholders? Would issuers be more dependent on discretionary broker votes? Should there be increased or more prominent disclosure regarding how those discretionary broker votes operate? What added disclosure should be required? Where should such disclosure appear (*e.g.*, on the Notice)?
- The rules do not require shareholders to print out copies of the proxy materials. However, shareholders may incur costs if they choose to print out the materials. We solicit comment on the costs that may be associated with shareholders choosing to print out copies.

VII. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[107] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rules are intended to provide an alternative for issuers and other soliciting persons that could reduce the cost of soliciting proxies and sending information statements regarding shareholder meetings. Currently, under our rules, a public company subject to Section 14 of the Exchange Act must furnish shareholders with an annual report and proxy statement, or an information statement if proxy authority is not being solicited. The primary means for satisfying this obligation historically has been the mailing of paper copies of the proxy materials.

Section 3(f) of the Exchange Act[108] and Section 2(c) of the Investment Company Act of 1940[109] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

We anticipate that the proposed rules, if adopted, would increase efficiency at public companies. Currently, many issuers must devote a significant amount of time and resources to proxy mailings. However, the proposed rules may impose added burdens on intermediaries to respond to requests for copies of the proxy materials and, under certain circumstances, to maintain their own Internet Web sites on which to post their request for voting instructions.

We request comment regarding the degree to which our proposed amendments would have competitively harmful effects on public companies, and how we could best minimize those effects. We also request comment on any disproportionate cross-sectional burdens among the firms affected by our proposals that could have anti-competitive effects.

VIII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to the rules and forms under the Exchange Act that would provide an alternative model for issuers and other persons soliciting proxies to satisfy certain of their obligations under the Commission's proxy rules. The proposed alternative is intended to put into place processes that

[106] For purposes of the PRA, we estimate that issuers would spend a total of $897,975 on outside professionals to prepare this disclosure. We also estimate that issuers would spend a total of 8,980 hours of issuer personnel time preparing this disclosure. We estimate the average hourly cost of issuer personnel time to be $125, resulting in a total cost of $1,122,500 for issuer personnel time. This results in a total cost of $2,020,475 for all issuers.

[107] 15 U.S.C. 78w(a)(2).

[108] 15 U.S.C. 78c(f).

[109] 15 U.S.C. 80a–2(c).

would ensure notice and access to proxy materials while taking advantage of technological developments and the growth of the Internet and electronic communications. The alternative that would be provided by the proposed amendments also could lower the costs of proxy solicitations that ultimately are borne by shareholders.

A. Reasons for the Proposed Action

The cost of conducting a proxy solicitation often is significant. As Internet access and computer usage have increased throughout the nation, the Commission believes it is time to propose rules that would provide issuers with an alternative model for meeting their proxy disclosure requirements in a manner that facilitates use of modern Internet and computer technologies.

B. Objectives

The primary objective of the proposed amendments is to improve the ability of issuers and other soliciting persons to take advantage of modern technologies to furnish proxy materials to shareholders. The increased use of such technologies holds the promise of reducing the costs of soliciting proxies. Under the Exchange Act, issuers generally must furnish either a proxy statement or an information statement and annual report to shareholders in advance of shareholder meetings. The costs of such distributions ultimately are borne by shareholders. In addition, extension of the proposed alternative model to soliciting persons other than the issuer would reduce the cost of conducting solicitations in opposition to the issuer's proxy solicitation.

The proposals could lower the cost to issuers and other soliciting persons while improving the ability of shareholders to participate meaningfully in the proxy process. These decreased costs may improve corporate governance by increasing management's accountability and responsiveness and providing shareholders with increased power to direct corporate policy. This may, in turn, enhance the value of shareholders' investments.

C. Legal Basis

We are proposing amendments to the forms and rules under the authority set forth in Sections 3(b), 10, 13, 14, 15, 23(a), and 36 of the Securities Exchange Act of 1934, as amended, and Section 20(a), 30, and 38 of the Investment Company Act of 1940, as amended.

D. Small Entities Subject to the Proposed Rules

The proposals would affect issuers that are small entities. Exchange Act Rule 0–10(a) [110] defines an issuer to be a ''small business'' or ''small organization'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 2,500 public companies, other than investment companies, that may be considered small entities.

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[111] Approximately 175 registered investment companies meet this definition. Moreover, approximately 65 business development companies may be considered small entities.

We request comment on the number of small entities that would be impacted by our proposals, including any available empirical data.

E. Reporting, Recordkeeping and Other Compliance Requirements

No issuer would be required to follow the proposed ''notice and access'' model. However, we expect that many issuers would choose to follow the proposed model because of the substantial cost savings that an issuer may realize. These issuers likely would include many small issuers.

If an issuer chooses to follow the model, it would be required to prepare, file, and disseminate a Notice of Internet Availability of Proxy Materials. The required disclosure in the Notice is information that would be readily available to the issuer. An issuer would be required to provide copies of the proxy materials to requesting shareholders and maintain a Web site on which to post the proxy materials.

F. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that conflict with or duplicate the proposed rules.

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following amendments:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- The clarification, consolidation or simplification of disclosure for small entities; and
- An exemption for small entities from coverage under the proposals.

The Commission has considered a variety of reforms to achieve its regulatory objectives. We believe that the current proposals are the most cost-effective approach for all public companies, including small entities.

The proposed amendments, if adopted, would provide an alternative model that would reduce the burden on all issuers, including small entities, that choose to employ the alternative. They are designed to permit issuers and other soliciting persons to minimize the cost of a proxy solicitation in a manner that is consistent with investor protection. We believe that, at this time, requiring less than the proposed amendments require would significantly increase the likelihood that shareholders may become disenfranchised from the voting process. Therefore, we do not believe it would be appropriate to make special provisions to further ease the burden on small entities.

Because the proposed amendments are designed to provide an alternative means that would reduce the burden on all issuers, an exemption from the proposed amendments or separate requirements for small entities would not be beneficial to small entities. The establishment of any differing compliance or reporting requirements or timetables or any exemptions for small business issuers may not be in keeping with the objectives of the proposed rules or the purposes of Section 14 of the Exchange Act.

H. Solicitation of Comment

We encourage comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposals;
- The existence or nature of the potential impact of the proposals on small entities discussed in the analysis; and
- How to quantify the impact of the proposed rules.

Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the

[110] 17 CFR 240.0–10(a).

[111] See Rule 0–10 under the Investment Company Act of 1940 [17 CFR 270.0–10].

Final Regulatory Flexibility Analysis, if the proposals are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

IX. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[112] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposals would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment or innovation.

X. Statutory Basis and Text of Proposed Amendments

The amendments are proposed pursuant to Sections 3(b), 10, 13, 14, 15, 23(a), and 36 of the Securities Exchange Act of 1934, as amended, and Sections 20(a), 30, and 38 of the Investment Company Act of 1940, as amended.

List of Subjects

17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Amend § 240.14a–2 by:

a. Removing the period and adding a semicolon at the end of paragraph (b)(3)(ii); and

b. Revising paragraph (b)(3)(iv).

The revision reads as follows:

§ 240.14a–2 Solicitations to which § 240.14a–3 to § 240.14a–15 apply.

* * * * *

(b) * * *

(3) * * *

(iv) The proxy voting advice is not furnished on behalf of any person soliciting proxies or on behalf of a participant in an election subject to the provisions of § 240.14a–12(c); and

* * * * *

3. Amend § 240.14a–3 by:

a. Revising paragraphs (a), (e)(1)(i), the introductory text of paragraphs (e)(1)(ii)(A) and (e)(1)(ii)(B)(*2*), paragraphs (e)(1)(ii)(B)(*2*)(*ii*), (e)(1)(ii)(B)(*2*)(*iii*), (e)(1)(ii)(B)(*3*), (e)(1)(iii), and (e)(2);

b. Revising the term ''annual report'' to read ''annual report to security holders'' in paragraph (b)(13), and

c. Adding paragraphs (e)(3) and (g).

The revisions and additions read as follows:

§ 240.14a–3 Information to be furnished to security holders.

(a) No solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with:

(1) A publicly-filed preliminary or definitive written proxy statement containing the information specified in Schedule 14A (§ 240.14a–101);

(2) A publicly-filed preliminary or definitive proxy statement, in the form and manner described in paragraph (g) of this section, containing the information specified in Schedule 14A (§ 240.14a–101); or

(3) A preliminary or definitive written proxy statement included in a registration statement filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.25 or § 239.34 of this chapter) or Form N–14 (§ 239.23 of this chapter) and containing the information specified in such Form.

* * * * *

(e)(1)(i) A registrant will be considered to have delivered an annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials to all security holders of record who share an address if:

(A) The registrant delivers one annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable, to the shared address;

(B) The registrant addresses the annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable, to the security holders as a group (for example, ''ABC Fund [or Corporation] Security Holders,'' ''Jane Doe and Household,'' ''The Smith Family''), to each of the security holders individually (for example, ''John Doe and Richard Jones'') or to the security holders in a form to which each of the security holders has consented in writing;

Note to paragraph (e)(1)(i)(B): Unless the company addresses the annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials to the security holders as a group or to each of the security holders individually, it must obtain, from each security holder to be included in the householded group, a separate affirmative written consent to the specific form of address the company will use.

(C) The security holders consent, in accordance with paragraph (e)(1)(ii) of this section, to delivery of one annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable;

(D) With respect to delivery of the proxy statement, the registrant delivers, together with or subsequent to delivery of the proxy statement, a separate proxy card for each security holder at the shared address; and

(E) The registrant includes an undertaking in the proxy statement to deliver promptly upon written or oral request a separate copy of the annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable, to a security holder at a shared address to which a single copy of the document was delivered.

(ii) *Consent.* (A) *Affirmative written consent.* Each security holder must affirmatively consent, in writing, to delivery of one annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable. A security holder's affirmative written consent will only be considered valid if the security holder has been informed of:

* * * * *

(B) * * *

(*2*) The registrant has sent the security holder a notice at least 60 days before the registrant begins to rely on this section concerning delivery of annual reports to security holders, proxy statements or Notices of Internet Availability of Proxy Materials to that security holder. The notice must:

* * * * *

(*ii*) State that only one annual report to security holders, proxy statement or Notice of Internet Availability of Proxy

[112] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

Materials, as applicable, will be delivered to the shared address unless the registrant receives contrary instructions;

(*iii*) Include a toll-free telephone number, or be accompanied by a reply form that is pre-addressed with postage provided, that the security holder can use to notify the registrant that the security holder wishes to receive a separate annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials;

* * * * *

(*3*) The registrant has not received the reply form or other notification indicating that the security holder wishes to continue to receive an individual copy of the annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable, within 60 days after the registrant sent the notice; and

* * * * *

(iii) *Revocation of consent.* If a security holder, orally or in writing, revokes consent to delivery of one annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials to a shared address, the registrant must begin sending individual copies to that security holder within 30 days after the registrant receives revocation of the security holder's consent.

* * * * *

(2) Notwithstanding paragraphs (a) and (b) of this section, unless state law requires otherwise, a registrant is not required to send an annual report to security holders or proxy statement to a security holder if:

(i) An annual report to security holders and a proxy statement for two consecutive annual meetings; or

(ii) All, and at least two, payments (if sent by first class mail) of dividends or interest on securities, or dividend reinvestment confirmations, during a twelve month period, have been mailed to such security holder's address and have been returned as undeliverable. If any such security holder delivers or causes to be delivered to the registrant written notice setting forth his then current address for security holder communications purposes, the registrant's obligation to deliver an annual report to security holders or a proxy statement under this section is reinstated.

(3) A consent to household the annual report to shareholders and proxy statement shall be deemed to be a consent to household a Notice of Internet Availability of Proxy Materials pursuant to paragraph (e)(1)(ii) of this section.

* * * * *

(g)(1) A registrant may furnish a proxy statement pursuant to paragraph (a) of this section, or an annual report to security holders pursuant to paragraph (b) of this section, to a security holder by sending the security holder a Notice of Internet Availability of Proxy Materials 30 days or more prior to the shareholder meeting date, or if no meeting is to be held, 30 days or more prior to the date the votes, consents or authorizations may be used to effect the corporate action, and complying with all other requirements of this paragraph (g). All proxy materials identified in the Notice of Internet Availability of Proxy Materials must be publicly accessible, free of charge, at the Web site address specified in the Notice of Internet Availability of Proxy Materials on the date that the Notice of Internet Availability of Proxy Materials is sent to the security holder and such materials must remain available on that Web site until the time of the meeting of security holders; provided, however, that any additional soliciting materials sent to security holders or made public after the Notice of Internet Availability of Proxy Materials has been sent must be made publicly accessible at the specified Web site address no later than the day on which such materials are first sent to security holders or made public. The Web site address relied upon for compliance under this paragraph (g) may not be on the Commission's EDGAR system. The publicly accessible proxy materials must be substantially identical to the copies of such proxy materials, including all graphics, charts and tables, that would otherwise be furnished pursuant to this section.

Note to paragraph (g)(1): If the registrant chooses to have an intermediary forward its Notice of Internet Availability of Proxy Materials to beneficial owners pursuant to § 240.14a–1 or § 240.14a–2, it must provide that intermediary with copies of the Notice of Internet Availability of Proxy Materials at least five business days prior to the deadline by which it must furnish such notices to the registrant's holders of record.

(2) The Notice of Internet Availability of Proxy Materials must contain the following:

(i) A prominent legend in bold-face type that states:

''Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting to Be Held on [insert meeting date].

1. This communication presents only an overview of the more complete proxy materials that are available to you on the Internet. We encourage you to access and review all of the important information contained in the proxy materials before voting.

2. The [proxy statement] [information statement] [annual report to shareholders] [proxy card] [is/are] available at [Insert Web site address].

3. If you want to receive a paper or e-mail copy of these documents, you must request one. There is no charge to you for requesting a copy. Please make your request for a copy as instructed below on or before [Insert a date that is two weeks or more before the meeting date] to facilitate timely delivery. If you hold your shares through a broker, bank, or other intermediary, you may request delivery of a copy of the proxy materials through that intermediary, but it likely will take longer to receive your materials through an intermediary than directly from the company.'';

(ii) The date, time, and location of the meeting, or if corporate action is to be taken by written consent, the earliest date on the corporate action may be effected;

(iii) A clear and impartial identification of each separate matter intended to be acted upon and the soliciting person's recommendations regarding those matters, but no supporting statements;

(iv) A list of the materials being made available at the specified Web site; and

(v)(A) A toll-free number; and

(B) An e-mail address where the security holder can request a copy of the proxy materials.

(3) The Notice of Internet Availability of Proxy Materials may not be incorporated into, or combined with, another document, except that it may be incorporated into or combined with a notice of shareholder meeting required under state law. Whether or not combined with the state law meeting notice, the Notice of Internet Availability of Proxy Materials must be sent separately from other types of shareholder communications and may not accompany any materials other than the proxy card and return envelope. The Notice of Internet Availability of Proxy Materials may contain only the information required by paragraph (g)(2) of this section and any additional information that is required by state law to be included in a notice of shareholders meeting; provided that, if the registrant is conducting a consent solicitation, it may revise the information required in the Notice of Internet Availability of Proxy Materials to reflect that fact.

(4) *Plain English.* (i) To enhance the readability of the Notice of Internet Availability of Proxy Materials, the registrant must use plain English principles in its organization, language, and design.

(ii) The registrant must draft the language in the Notice of Internet Availability of Proxy Materials so that at a minimum it substantially complies with each of the following plain English writing principles:

(A) Short sentences;

(B) Definite, concrete, everyday words;

(C) Active voice;

(D) Tabular presentation or bullet lists for complex material, whenever possible;

(E) No legal jargon or highly technical business terms; and

(F) No multiple negatives.

(iii) In designing the Notice of Internet Availability of Proxy Materials, the registrant may include pictures, logos, charts, or other design elements so long as the design is not misleading and the required information is clear.

(5) The registrant may, at its discretion, choose to furnish some proxy materials in paper and other proxy materials electronically pursuant to this paragraph (g). The registrant may send the Notice of Internet Availability of Proxy Materials and the form of proxy together through the same delivery medium. The form of proxy may not be furnished pursuant to this paragraph (g) except by:

(i) Being furnished together through the same delivery medium with the Notice of Internet Availability of Proxy Materials; or

(ii) Being furnished together through the same delivery medium with the proxy statement complying with Schedule 14A (§ 240.14a–101) (which can be accomplished through posting on the Internet Web site in accordance with this paragraph (g)).

(6) The Notice of Internet Availability of Proxy Materials shall be filed with the Commission pursuant to § 240.14a–6(b) no later than the date it is first sent or given to shareholders.

(7) *Obligation to provide copies.* (i) The registrant must send, at no cost and by U.S. First Class mail or other reasonably prompt means, a paper copy of the proxy materials to any shareholder requesting such a copy within two business days after receiving a request for a paper copy.

(ii) The registrant must send, at no cost and via e-mail, an electronic copy of the proxy materials to any shareholder requesting such a copy within two business days after receiving a request for an electronic copy via e-mail.

(8) A person other than the registrant may solicit proxies pursuant to the conditions imposed on registrants by this paragraph (g) provided:

(i) A soliciting person other than the registrant need not send a Notice of Internet Availability of Proxy Materials to anyone other than security holders to whom that person sends a form of proxy, if any.

(ii) If a soliciting person other than the registrant intends to provide copies of the soliciting materials by any means other than Web site access, any Notice of Internet Availability of Proxy Materials must be sent by the later of:

(A) 30 days prior to the shareholder meeting date or, if no meeting is to be held, 30 days prior to the date the votes, consents, or authorizations may be used to effect the corporate action; or

(B) 10 days after the registrant first sends its proxy solicitation.

(iii) If a soliciting person other than the registrant intends to furnish copies of the soliciting materials only by posting the materials on an Internet Web site, any Notice on Internet Availability of Proxy Materials must state clearly that the soliciting person will not provide copies of the soliciting materials and that the solicitation is conditioned on the security holder agreeing to access the soliciting materials via the specified Web site.

(iv) *Content of Notice of Internet Availability of Proxy Materials in certain situations.* (A) If a soliciting person other than the registrant conditions its proxy solicitation on the security holder agreeing to access the soliciting materials via the specified Web site, the Notice need not contain instructions regarding how to request copies.

(B) If, at the time the Notice is sent, a soliciting person other than the registrant is not aware of all matters intended to be acted upon, the Notice must provide a clear and impartial identification of each separate matter to the extent known by the soliciting person at the time that the Notice is first sent to security holders and a clear statement that there may be additional agenda items of which the soliciting party is not aware.

(C) If a soliciting person other than the registrant sends a form of proxy not containing all matters intended to be acted upon, the Notice must clearly state that execution of the form of proxy may invalidate a security holder's prior vote on matters not presented on the form of proxy.

(9) This paragraph (g) shall not apply to a proxy solicitation in connection with a business combination transaction, as defined in § 230.165 of this chapter.

(10) This paragraph (g) provides a non-exclusive alternative by which an issuer or other person may furnish a proxy statement pursuant to paragraph (a) of this section or an annual report to security holders pursuant to paragraph (b) of this section to a security holder. This paragraph (g) does not affect the availability of any other means by which an issuer or other person may furnish a proxy statement pursuant to paragraph (a) of this section or an annual report to security holders pursuant to paragraph (b) of this section to a security holder.

§ 240.14a–4 [Amended]

4. Amend § 240.14a–4 by:

a. Removing the authority citation following the section;

b. Revising the word ''mailed'' to read ''sent'' in the first sentence of paragraph (c)(1); and

c. Revising the word ''mails'' to read ''sends'' in the last sentence of paragraph (c)(1).

5. Amend § 240.14a–7 by:

a. Revising paragraph (a)(2)(i) and (a)(2)(ii); and

b. Adding paragraphs (a)(2)(iii) and (f) and Note 3 to § 240.14a–7.

The revisions and additions read as follows:

§ 240.14a–7 Obligations of registrants to provide a list of, or mail soliciting material to, security holders.

* * * * *

(a) * * *

(2) * * *

(i) Send copies of any proxy statement, form of proxy, or other soliciting material, including a Notice of Internet Availability of Proxy Materials (as defined in § 240.14a–3(g)), furnished by the security holder to the record holders, including banks, brokers, and similar entities, designated by the security holder. A security holder may designate only record holders who have not requested copies of the registrant's soliciting materials. A sufficient number of copies must be sent to the banks, brokers, and similar entities for distribution to all beneficial owners designated by the security holder. If the registrant has received affirmative written or implied consent to deliver a single proxy statement to security holders at a shared address in accordance with the procedures in § 240.14a–3(e)(1), a single copy of the proxy materials furnished by the security holder shall be sent to that address. Upon request by a soliciting security holder, the registrant must send the proxy materials furnished by the security holder electronically to all record holders designated by the security holder who have provided the registrant with an affirmative consent to electronic delivery of proxy materials

via means permitted by such consent. The registrant shall send the security holder material with reasonable promptness after tender of the material to be sent, envelopes or other containers therefore, postage or payment for postage and other reasonable expenses of effecting such distribution. The registrant shall not be responsible for the content of the material; or

(ii) Deliver the following information to the requesting security holder within five business days of receipt of the request:

(A) A reasonably current list of the names, addresses and security positions of the record holders, including banks, brokers and similar entities holding securities in the same class or classes as holders which have been or are to be solicited on management's behalf, or any more limited group of such holders designated by the security holder if available or retrievable under the registrant's or its transfer agent's security holder data systems;

(B) The most recent list of names, addresses and security positions of beneficial owners as specified in § 240.14a–13(b), in the possession, or which subsequently comes into the possession, of the registrant;

(C) The names of security holders at a shared address that have consented to delivery of a single copy of proxy materials to a shared address, if the registrant has received written or implied consent in accordance with § 240.14a–3(e)(1);

(D) The names of security holders who have consented to electronic delivery of proxy materials and the information related to such consent that enables the requesting security holder to deliver the proxy materials electronically; and

(E) The names of security holders who, on the date that the registrant receives the request, have requested copies of the proxy materials, pursuant to § 240.14a–3(g)(7).

(iii) All security holder list information shall be in the form requested by the security holder to the extent that such form is available to the registrant without undue burden or expense. The registrant shall furnish the security holder with updated record holder information on a daily basis or, if not available on a daily basis, at the shortest reasonable intervals; provided, however, the registrant need not provide beneficial or record holder information more current than the record date for the meeting or action.

* * * * *

(f) *Definition of address.* Unless otherwise indicated, for purposes of this section, address means a street address, a post office box number, an electronic mail address, a facsimile telephone number or other similar destination to which paper or electronic documents are delivered, unless otherwise provided in this section.

Notes to § 240.14a–7.

* * * * *

3. If the registrant is sending the requesting security holder's materials under § 240.14a–7, and if the requesting security holder requests that the materials be sent electronically, the registrant shall send copies of those materials electronically pursuant to the requirements of § 240.14a–3(g); provided, however, that the requesting security holder's materials comply with all the requirements of § 240.14a–3(g).

§ 240.14a–8 [Amended]

6. Amend § 240.14a–8 by revising the word ''mail'' to read ''send'' in the last sentence of paragraph (e)(2) and in paragraph (e)(3) and the word ''mails'' to read ''sends'' in the introductory text of paragraph (m)(3).

§ 240.14a–12 [Amended]

7. Amend § 240.14a–12 by revising the term ''annual report'' to read ''annual report to security holders'' in the heading of paragraph (c)(1) and the first sentence of paragraph (c)(1).

8. Amend § 240.14a–13 by:

a. Revising the word ''mailing'' to read ''sending'' in paragraph (a)(5) and the word ''mail'' to read ''send'' in Note 2 following paragraph (a) and in paragraph (c), each time it appears; and

b. Adding paragraph (e).

The addition reads as follows:

§ 240.14a–13 Obligation of registrants in communicating with beneficial owners.

* * * * *

(e) *Definition of address.* Unless otherwise indicated, for purposes of this section, address means a street address, a post office box number, an electronic mail address, a facsimile telephone number or other similar destination to which paper or electronic documents are delivered, unless otherwise provided in this section.

§ 240.14a–101 [Amended]

9. Amend § 240.14a–101 by:

a. Revising the term ''annual report'' to read ''annual report on Form 10–K or Form 10–KSB'' in Instruction 1 to paragraph (d)(2)(ii)(L) of Item 7;

b. Revising the word ''mail'' to read ''send'' in Instruction 2 to paragraph (d)(2)(ii)(L) of Item 7;

c. Revising the term ''annual report'' to read ''annual report to security holders'' in the introductory text and paragraphs (a), (b), and (c) of Item 23; and

d. Revising the term ''annual reports'' to read ''annual reports to security holders'' in paragraph (d) of Item 23 each time it appears.

10. Amend § 240.14b–1 by:

a. Revising the last sentence of the introductory text of paragraph (a), paragraphs (a)(1), (a)(2), (b)(2) before the Note, and (c)(2)(i);

b. Revising the term ''annual reports'' to read ''annual reports to security holders'' in paragraphs (c)(2)(ii) and (c)(3);

c. Revising the term ''annual report'' to read ''annual report to security holders'' in paragraph (c)(2)(ii);

d. Revising the word ''mail'' to read ''send'' in paragraph (c)(2)(ii); and

e. Adding paragraph (d).

The revisions and additions read as follows:

§ 240.14b–1 Obligation of registered brokers and dealers in connection with the prompt forwarding of certain communications to beneficial owners.

(a) *Definitions.* * * * In addition, as used in this section, the following definitions apply:

(1) *Registrant.* The issuer of a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*) or an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

(2) *Address.* A street address, a post office box number, an electronic mail address, a facsimile telephone number or other similar destination to which paper or electronic documents are delivered, unless otherwise provided in this section.

(b) * * *

(2) The broker or dealer shall, upon receipt of the Notice of Internet Availability of Proxy Materials, proxy, other proxy soliciting material, information statement, and/or annual reports to security holders from the registrant or other soliciting person, forward such materials to its customers who are beneficial owners of the registrant's securities no later than five business days after receipt of the proxy material, information statement or annual reports to security holders.

* * * * *

(c) * * *

(2) * * *

(i) Its obligations under paragraphs (b)(2), (b)(3) and (d) of this section if the registrant or other soliciting person, as applicable, does not provide assurance of reimbursement of the broker's or dealer's reasonable expenses, both direct and indirect, incurred in connection with performing the

obligations imposed by paragraphs (b)(2), (b)(3) and (d) of this section; or

* * * * *

(d) If a registrant or other soliciting person has provided the broker or dealer with copies of a Notice of Internet Availability of Proxy Materials which provide instructions on requesting copies of the soliciting materials for forwarding to its beneficial owner customers, upon receipt of such request from a beneficial owner customer, the broker or dealer shall:

(1) Request a copy of the soliciting materials from the registrant, in the form requested by the beneficial owner customer, within two business days after receiving the customer's request; and

(2) Forward a copy of the soliciting materials to the beneficial owner customer, in the form requested by the beneficial owner customer, within two business days after receiving the materials from the registrant.

11. Amend § 240.14b–2 by:

a. Adding paragraphs (a)(4) and (d);

b. Revising the introductory text of paragraph (b)(3) and paragraph (c)(2)(i);

c. Revising the term ''annual reports'' to read ''annual reports to security holders'' in paragraph (c)(2)(ii) and (c)(4);

d. Revising the term ''annual report'' to read ''annual report to security holders'' in paragraph (c)(2)(ii); and

e. Revising the word ''mail'' to read ''send'' in paragraph (c)(2)(ii).

The additions and revisions read as follows:

§ 240.14b–2 Obligation of banks, associations and other entities that exercise fiduciary powers in connection with the prompt forwarding of certain communications to beneficial owners.

(a) * * *

(4) The term *address* means a street address, a post office box number, an electronic mail address, a facsimile telephone number or other similar destination to which paper or electronic documents are delivered, unless otherwise provided in this section.

(b) * * *

(3) Upon receipt of the Notice of Internet Availability of Proxy Materials, proxy, other proxy soliciting material, information statement, and/or annual reports to security holders from the registrant or other soliciting person, the bank shall forward such materials to each beneficial owner on whose behalf it holds securities, no later than five business days after the date it receives such material and, where a proxy is solicited, the bank shall forward, with the other proxy soliciting material and/or the annual report to security holders, either:

* * * * *

(c) * * *

(2) * * *

(i) Its obligations under paragraphs (b)(2), (b)(3), (b)(4) and (d) of this section if the registrant or other soliciting person, as applicable, does not provide assurance of reimbursement of its reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by paragraphs (b)(2), (b)(3), (b)(4) and (d) of this section; or

* * * * *

(d) If a registrant or other soliciting person has provided the bank with copies of a Notice of Internet Availability of Proxy Materials which provide instructions on requesting copies of the soliciting materials for forwarding to its beneficial owner customers, upon receipt of such request from a beneficial owner customer, the bank shall:

(1) Request a copy of the soliciting materials from the registrant, in the form requested by the beneficial owner customer, within two business days after receiving the customer's request; and

(2) Forward a copy of the soliciting materials to the beneficial owner customer, in the form requested by the beneficial owner customer, within two business days after receiving the materials from the registrant.

12. Amend § 240.14c–2 by:

a. Revising paragraph (a); and

b. Adding paragraph (d).

The revision and addition read as follows:

§ 240.14c–2 Distribution of information statement.

(a)(1) In connection with every annual or other meeting of the holders of the class of securities registered pursuant to section 12 of the Act or of a class of securities issued by an investment company registered under the Investment Company Act of 1940 that has made a public offering of securities, including the taking of corporate action by the written authorization or consent of security holders, the registrant shall transmit to every security holder of the class that is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom proxy authorization or consent is not solicited on behalf of the registrant pursuant to Section 14(a) of the Act:

(i) A written information statement containing the information specified in Schedule 14C (§ 240.14c–101);

(ii) A publicly-filed information statement, in the form and manner described in § 240.14c–3(d), containing the information specified in Schedule 14C (§ 240.14c–101); or

(iii) A written information statement included in a registration statement filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.25 or § 239.34 of this chapter) or Form N–14 (§ 239.23 of this chapter) and containing the information specified in such Form.

(2) Notwithstanding paragraph (a)(1) of this section:

(i) In the case of a class of securities in unregistered or bearer form, such statements need to be transmitted only to those security holders whose names are known to the registrant; and

(ii) No such statements need to be transmitted to a security holder if a registrant would be excused from delivery of an annual report or a proxy statement under Rule 14a–3(e)(2) (240.14a–3(e)(2)) if such section were applicable.

* * * * *

(d) A registrant may transmit an information statement to security holders pursuant to paragraph (a) of this section by satisfying the requirements set forth in § 240.14a–3(g); provided, however, that the registrant may revise the information required in the Notice of Internet Availability of Proxy Materials to reflect the fact that the registrant is not soliciting proxies for the meeting. This paragraph (d) provides a non-exclusive alternative by which a registrant may transmit an information statement pursuant to paragraph (a) of this section to a security holder. This paragraph (d) does not affect the availability of any other means by which a registrant may transmit an information statement pursuant to paragraph (a) of this section to a security holder.

13. Amend § 240.14c–3 by:

a. Removing the authority citation following this section;

b. Revising paragraphs (a)(1) and (c), and

c. Adding paragraph (d).

The revisions and addition read as follows:

§ 240.14c–3 Annual report to be furnished security holders.

(a) * * *

(1) The annual report to security holders shall contain the information specified in paragraphs (b)(1) through (b)(11) of § 240.14a–3.

* * * * *

(c) A registrant will be considered to have delivered a Notice of Internet Availability of Proxy Materials, annual report to security holders or information statement to security holders of record who share an address if the

requirements set forth in § 240.14a–3(e)(1) are satisfied with respect to the Notice of Internet Availability of Proxy Materials, annual report to security holders or information statement, as applicable.

(d) A registrant may furnish an annual report to security holders pursuant to paragraph (a) of this section by satisfying the requirements set forth in § 240.14a–3(g). This paragraph (d) provides a non-exclusive alternative by which a registrant may furnish an annual report pursuant to paragraph (a) of this section to a security holder. This paragraph (d) does not affect the availability of any other means by which a registrant may furnish an annual report pursuant to paragraph (a) of this section to a security holder.

* * * * *

§ 240.14c–5 [Amended]

14. Amend § 240.14c–5 by revising the word ''mailed'' to read ''sent'' in the second sentence of the introductory text of paragraph (a).

15. Amend § 240.14c–7 by revising paragraph (a)(5) before the Note and the word ''mail'' to read ''send'' in Note 2 following paragraph (a).

The revision reads as follows:

§ 240.14c–7 Providing copies of material for certain beneficial owners.

(a) * * *

(5) Upon the request of any record holder or respondent bank that is supplied with Notices of Internet Availability of Proxy Materials, information statements and/or annual reports to security holders pursuant to paragraph (a)(3) of this section, pay its reasonable expenses for completing the sending of such material to beneficial owners.

* * * * *

§ 240.14c–101 [Amended]

16. Amend § 240.14c–101 by revising:

a. The word ''mailing'' to read ''sending'' in Item 4, Instruction 1;

b. The phrase ''annual report'' to read ''annual report to security holders'' in the introductory text and paragraphs (a), (b), and (c) of Item 5 each time it appears; and

c. The phrase ''annual reports'' to read ''annual reports to security holders'' in paragraph (d) of Item 5 each time it appears.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

17. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.*, 7202, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

18. Amend Item 4 to ''Part II—Other Information'' of Form 10–Q (referenced in § 249.308a) by revising paragraph (d) to read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–Q

* * * * *

Part II—Other Information

* * * * *

Item 4. Submission of Matters to a Vote of Security Holders

* * * * *

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in Instruction 3 to Item 4 of Schedule 14A (§ 240.14a–101)) terminating any solicitation subject to § 240.14a–12(c), including the cost or anticipated cost to the registrant.

* * * * *

19. Amend Item 4 to ''Part II—Other Information'' of Form 10–QSB (referenced in § 249.308b) by revising paragraph (d) to read as follows:

Note: The text of Form 10–QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–QSB

* * * * *

Part II—Other Information

* * * * *

Item 4. Submission of Matters to a Vote of Security Holders

* * * * *

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in Instruction 3 to Item 4 of Schedule 14A (§ 240.14a–101)) terminating any solicitation subject to § 240.14a–12(c), including the cost or anticipated cost to the registrant.

* * * * *

20. Amend Item 4 to Part I of Form 10–K (referenced in § 249.310) by revising paragraph (d) to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

* * * * *

Part I

* * * * *

Item 4. Submission of Matters to a Vote of Security Holders

* * * * *

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in Instruction 3 to Item 4 of Schedule 14A (§ 240.14a–101)) terminating any solicitation subject to § 240.14a–12(c), including the cost or anticipated cost to the registrant.

* * * * *

21. Amend Item 4 to Part I of Form 10–KSB (referenced in § 249.310b) by revise paragraph (d) to read as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB

* * * * *

Part I

* * * * *

Item 4. Submission of Matters to a Vote of Security Holders

* * * * *

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in Instruction 3 to Item 4 of Schedule 14A (§ 240.14a–101)) terminating any solicitation subject to § 240.14a–12(c), including the cost or anticipated cost to the registrant.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

22. The authority citation for Part 274 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

23. Amend Sub-Item 77C to ''Instructions to Specific Items'' of Form N–SAR (referenced in §§ 249.330 and 274.101) by revising paragraph (d) to read as follows:

Note: The text of Form N–SAR does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–SAR

* * * * *

Instructions to Specific Items

* * * * *

SUB–ITEM 77C: Submission of matters to a vote of security holders

* * * * *

(d) Describe the terms of any settlement between the registrant and any other participant (as defined in Instruction 3 to Item 4 of Schedule 14A (§ 240.14a–101)) terminating any solicitation subject to § 240.14a–12(c), including the cost or anticipated cost to the registrant.

* * * * *

By the Commission.

Dated: December 8, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–24004 Filed 12–14–05; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Thursday,
December 15, 2005

Part VI

Department of Education

34 CFR Parts 200 and 300

Title I—Improving the Academic Achievement of the Disadvantaged; Individuals With Disabilities Education Act (IDEA)—Assistance to States for the Education of Children With Disabilities; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 200 and 300

RIN 1810–AA98

Title I—Improving the Academic Achievement of the Disadvantaged; Individuals With Disabilities Education Act (IDEA)—Assistance to States for the Education of Children With Disabilities

AGENCY: Office of Elementary and Secondary Education; Office of Special Education and Rehabilitative Services, U.S. Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing programs administered under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB) (referred to in these proposed regulations as the Title I program) and the regulations governing programs under Part B of the Individuals with Disabilities Education Act (IDEA) (referred to in these proposed regulations as the IDEA program). The proposed regulations would provide States with additional flexibility regarding State, local educational agency (LEA), and school accountability for the achievement of a group of students with disabilities who can make significant progress, but may not reach grade-level achievement standards within the same time frame as other students, even after receiving the best-designed instructional interventions from highly trained teachers.

DATES: We must receive your comments on or before February 28, 2006.

ADDRESSES: Address all comments about these proposed regulations to Jacquelyn C. Jackson, Ed.D., Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C156, FB–6, Washington, DC 20202–6132. If you prefer to send your comments through the Internet, you may address them to us at the U.S. Government Web site: *http://www.regulations.gov.*

Or you may send your Internet comments to us at the following address: *TitleIrulemaking@ed.gov.* You must include the term ''proposed 2% rule'' in the subject line of your electronic message.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Jackson, Ed.D, Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, Telephone: (202) 260–0826 or via Internet at jacqueline.jackson@ed.gov, or you may contact Troy R. Justesen, Ed.D, Deputy Assistant Secretary, Office of Special Education and Rehabilitative Services, Telephone: (202) 245–7468 or via Internet at *troy.justesen@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have the maximum effect as we develop the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3W100, FB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the persons listed under **FOR FURTHER INFORMATION CONTACT.**

Background

These proposed regulations would amend regulations in 34 CFR part 200, implementing certain provisions of Title I, Part A of the ESEA, as amended by NCLB, which is designed to help disadvantaged children meet high academic standards. They would also amend regulations in 34 CFR part 300, implementing programs for students with disabilities under Part B of the IDEA.

These proposed regulations provide flexibility for some students with disabilities similar to that afforded by the current Title I regulations in 34 CFR part 200 regarding children with the most significant cognitive disabilities. Those Title I regulations permit a State to develop alternate academic achievement standards for students with the most significant cognitive disabilities and to include those students' proficient and advanced scores on alternate assessments based on alternate achievement standards in measuring adequate yearly progress (AYP), subject to a cap of 1.0 percent of the students assessed at the State and district levels. The purpose of those regulations was to provide flexibility for States and LEAS regarding the assessment of a very small group of students—those students with the most significant cognitive disabilities—to ensure that schools and districts receive credit for the good work they are doing with those students.

In the preamble to the December 9, 2003 notice announcing the regulations adopting the flexibility for students with the most significant cognitive disabilities, the Department indicated that, ''as data and research on assessing students with disabilities improve, the Department may decide to issue regulations or guidance on other related issues in the future'' (68 FR 68698). Since that time, information accumulated from the experiences of many States, as well as recent research, indicates that there are other students who, because of their disability, have significant difficulty achieving grade-level proficiency, even with the best instruction. This information and research indicate that there is a group of students with disabilities whose progress in response to high-quality instruction, including special education

and related services designed to address the student's individual needs, is such that the student is not likely to achieve grade-level proficiency within the school year covered by the student's individualized education program (IEP).

The proposed regulations would provide States with additional flexibility in measuring the achievement of this group of students with disabilities who do not meet State guidelines to participate in an alternate assessment based on alternate achievement standards, which is appropriate only for students with the most significant cognitive disabilities. Specifically, the proposed regulations would permit States to develop modified achievement standards (and assessments that measure achievement based on those standards) that are aligned with grade-level content standards, but are modified in such a manner that they reflect reduced breadth or depth of grade-level content. At the same time, the proposed regulations would include several safeguards to ensure that students are not inappropriately assessed based on modified achievement standards, including requirements that each State develop guidelines defining which students with disabilities are eligible to be assessed based on modified achievement standards. Similar to the current regulations, under the proposed regulations, States and LEAs would be permitted to include the proficient and advanced scores from assessments based on modified achievement standards in AYP determinations, subject to a cap at the district and State levels based on the total number of students assessed. As described elsewhere in this notice, the best available research and data indicate that 2.0 percent, or approximately 20 percent of students with disabilities, is a reasonable cap. We are also proposing other changes that would address the implementation of this cap at the State and local levels.

Additionally, to ensure a coordinated administration of the IDEA and Title I programs, § 300.160 of these proposed regulations would make changes to the proposed regulations published in the **Federal Register** on June 21, 2005 (70 FR 35839) to implement the IDEA as reauthorized by the Individuals with Disabilities Education Improvement Act of 2004, Public Law No. 108–446, enacted on December 3, 2004, regarding inclusion of children with disabilities in State and district-wide assessment systems in accordance with section 612(a)(16) of the IDEA. We are proposing regulations that will implement relevant provisions of the recently reauthorized IDEA and will include this new flexibility to assess students with disabilities based on modified achievement standards. This coordination of the regulations for the IDEA and Title I programs will avoid confusion among parents, teachers, and administrators, and reinforce IDEA's and Title I's shared goal of high expectations and accountability for all students. We will issue a final § 300.160 at the same time that we issue the final Title I regulations proposed in this notice.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Section 200.1 State Responsibilities for Developing Challenging Academic Standards

Statute: Section 1111(b)(1) of Title I requires each State to adopt challenging academic content standards and student academic achievement standards in mathematics, reading/language arts, and, beginning in the 2005–2006 school year, science. These standards must be the same for all public elementary and secondary schools and all public school students in the State. The State's academic content standards must specify what all students are expected to know and be able to do, contain coherent and rigorous content, and encourage the teaching of advanced skills. The State's student academic achievement standards must be aligned with the State's content standards and must describe at least three levels of achievement: advanced, proficient, and basic.

Current regulations: Section 200.1 of the Title I regulations implements the statutory requirements in section 1111(b)(1), regarding the development of standards generally. A State must apply these standards to all public elementary and secondary schools and public school students in the State. Section 200.1 also recognizes that there is a small percentage of students with disabilities—those with the most significant cognitive disabilities—who will likely never reach grade-level achievement standards, even with the very best instruction. Thus, § 200.1(d) permits a State to develop alternate achievement standards for students with the most significant cognitive disabilities, so long as those standards are aligned with the State's academic content standards, promote access to the general curriculum, and reflect professional judgment of the highest achievement standards possible for those students. An alternate achievement standard is an expectation of performance that differs in complexity from a grade-level achievement standard.

Proposed Regulations: Similar to the flexibility afforded to States and LEAs for students with the most significant cognitive disabilities, proposed § 200.1(e) would allow a State to use a documented and validated standards-setting process to define modified achievement standards for some students with disabilities. Proposed § 200.1(e)(1)(i) through (iii) would require that modified achievement standards provide access to grade-level curriculum; be aligned with the State's academic content standards for the grade in which the student is enrolled, although the modified achievement standards may reflect reduced breadth or depth of grade-level content; and not preclude a student from earning a regular high-school diploma.

Proposed § 200.1(e)(2) would require a State to adopt specific criteria for IEP teams to use in determining whether a student is eligible to be assessed based on modified achievement standards. Proposed § 200.1(e)(2)(i) through (iii) provides that, in order for an IEP team to determine that a student is eligible to be assessed based on modified achievement standards, the IEP team must conclude that: The student's disability has precluded the student from achieving grade-level proficiency, as demonstrated by objective evidence; the student's progress in response to high-quality instruction, including special education and related services designed to address the student's individual needs, is such that the student is not likely to achieve grade-level proficiency within the school year covered by the IEP; and the student is receiving instruction in the grade-level curriculum for the subjects in which the student is being assessed. Proposed § 200.1(e)(3) would clarify that students eligible to take assessments based on modified achievement standards may be in any of the 13 disability categories listed in the IDEA. Proposed § 200.1(e)(4) would provide that a student may be held to modified academic achievement standards in one or more subjects for which the State administers assessments. Proposed § 200.1(e)(5) would require that IEP teams review on an annual basis their decision to assess a student based on modified achievement standards to ensure that those standards remain appropriate.

Proposed § 200.1(f), regarding the development of State guidelines and

notice to parents, would incorporate the provisions of § 200.6(a)(2)(iii)(A) and include references to assessments based on modified achievement standards. This provision would require each State to establish and ensure implementation of clear and appropriate guidelines for IEP teams to use in determining which students with disabilities may be held to either alternate or modified academic achievement standards and to ensure that parents of those students, as members of the IEP team and as participants in the IEP process, are informed that their child's achievement will be measured based on alternate or modified achievement standards.

Reasons: In proposing these amendments to § 200.1, we acknowledge that, while all children can learn challenging content, certain students, because of their disability, may not be able to achieve grade-level proficiency within the same time-frame as other students, even after receiving the best-designed instructional interventions, including special education and related services designed to address the student's individual needs, from highly trained teachers. We believe it is appropriate for these students to be assessed on grade-level content, but to measure their performance based on achievement standards that have been modified and differ in breadth or depth from grade-level achievement standards. The proposed regulations would permit States to establish modified achievement standards, so long as they meet certain requirements under proposed § 200.1(e)(1) that are designed to ensure that these students work toward mastering grade-level content. The proposed regulation therefore would require that modified achievement standards be aligned with grade-level content, but adjusted to reflect reduced breadth or depth of grade-level content so that students with disabilities participating in an assessment based on modified achievement standards would be better able to demonstrate what they know and can do.

Although proficient performance based on modified achievement standards will not indicate the same level of achievement as proficient performance based on grade-level achievement standards, modified achievement standards must be aligned to grade-level content standards. Furthermore, we anticipate that there will be significant overlap between the regular and modified achievement standards; but there would be no similar overlap between alternate achievement standards and grade-level achievement standards. Because assessing a student's performance based on modified achievement standards would not preclude a student from receiving a regular diploma, students with disabilities participating in this type of assessment would not automatically be held to a lower graduation standard.

The proposed regulations also are necessary to ensure that States have guidelines in place with certain key elements that will help IEP teams appropriately determine which students should be assessed based on modified achievement standards. We anticipate that it will be more difficult, in general, for IEP teams to determine the students with disabilities for whom modified achievement standards would be appropriate than it is for IEP teams to determine the students with the most significant cognitive disabilities for whom alternate achievement standards are appropriate. Students assessed based on modified achievement standards would not simply be students who are having difficulty with grade-level content or who are receiving instruction below grade level. Nor would they necessarily be the lowest-achieving two percent of students, who are not students with the most significant cognitive disabilities. In fact, based on recent data from the Special Education Elementary Longitudinal Study (SEELS) funded by the Office of Special Education Programs (OSEP), we anticipate that students from each of the 13 disability categories listed in the IDEA will be among those who are assessed based on modified achievement standards.

Students for whom modified achievement standards would be appropriate may require assessments that are different both in format or design due to the nature of their disability. IEP teams would determine the appropriateness of modified achievement standards based on the unique needs of each individual student with a disability. However, because it is of paramount importance to ensure that students are not held inappropriately to standards other than grade-level achievement standards, the proposed regulations would include criteria that we consider critical to support States in their implementation of modified achievement standards and to ensure that IEP teams make appropriate determinations about which students participate in assessments based on modified achievement standards. The proposed criteria are designed to help IEP teams distinguish between students whose disability has truly precluded them from achieving grade-level proficiency and those who, with appropriate services and interventions, including special education and related services designed to address the student's individual needs, can be assessed based on grade-level achievement standards. The effect of these proposed regulations and the IDEA will put into place four key safeguards regarding identification for assessment based on modified achievement standards:

1. Consistent with the IDEA and as a part of the evaluation process, a team of qualified professionals and the parent of the child would ensure that a student is not identified for special education services due to lack of instruction. That is, the team must demonstrate that the determining factor for such identification is not a lack of appropriate instruction in reading and math (20 U.S.C. 1414(b)(5)). After a child is identified, the special education and related services a child receives under the child's IEP should be of high quality and specially designed to meet the unique needs of the individual, and move a child closer to grade-level achievement, if the child is not already achieving at grade level.

2. Proposed § 200.1(e)(2)(ii)(A) would ensure that IEP teams examine a student's progress in response to high-quality instruction, including special education and related services designed to address the student's needs. The requirement to assess the student's performance using multiple measures over time in proposed § 200.1(e)(2)(ii)(B) would ensure that a student is not given an assessment based on modified achievement standards on the basis of performance on one assessment or measurement.

3. Proposed § 200.1(e)(2)(iii) would ensure that students are not assessed based on modified achievement standards if they have not had the opportunity to learn grade-level content. Implementing challenging standards, coupled with ensuring that students are receiving grade-level instruction in the subjects in which they are assessed, would provide a safeguard against leaving children behind due to lack of proper instruction.

4. As indicated in proposed 200.1(e)(5), the decision to assess a student based on modified achievement standards would not be a permanent one, and would be reviewed on a yearly basis as part of the IEP process.

Proposed § 200.1(f) emphasizes the very important responsibility of each State to establish clear and appropriate guidelines, which include the criteria for IEP teams to apply in determining whether a student with a disability may be held to modified academic

achievement standards. The guidelines required by proposed § 200.1(f) must provide sufficient guidance to ensure that IEP teams (which include parents) make appropriate decisions regarding those students for whom either alternate or modified achievement standards are appropriate. Moreover, § 200.1(f) would also safeguard students' interests because parents, as members of the IEP teams, will participate in and be informed about the decision to assess their child's achievement based on alternate or modified achievement standards.

Section 200.6 Inclusion of All Students

Statute: Section 1111(b)(3)(C) of Title I of the ESEA provides that a State's academic assessment system must be aligned with the State's challenging academic content and academic achievement standards and measure the achievement of all students in the grades assessed, including students with disabilities as defined under section 602(3) of the IDEA, students covered by Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), and students with limited English proficiency. With respect to students with disabilities in particular, the system must provide for reasonable accommodations necessary to measure their academic achievement relative to the State's content and achievement standards that all students are expected to meet.

Current regulations: Section 200.6 of the Title I regulations clarifies that a State's academic assessment system must include accommodations for students with disabilities under the IDEA and for students covered under Section 504 to allow the State to measure the academic achievement of these students relative to the State's academic content and academic achievement standards for the grades in which they are enrolled. In addition, the regulations require a State to provide one or more alternate assessments for students with disabilities who cannot participate in all or part of the State assessment, even with appropriate accommodations. These alternate assessments must yield results for the grade in which the student is enrolled in at least reading/language arts, mathematics, and, beginning in the 2007–2008 school year, science.

Section 200.6 also permits the use of alternate assessments to measure the achievement of students with the most significant cognitive disabilities based on the alternate academic achievement standards a State adopts under § 200.1(d). If a State permits the achievement of students with the most significant cognitive disabilities to be measured with alternate assessments that yield results based on alternate achievement standards, the State must report, to the Secretary, those results separately from students with disabilities who take the regular assessment or an alternate assessment based on grade-level achievement standards. The State must also document that students with the most significant cognitive disabilities are included, to the extent possible, in the general curriculum and in assessments aligned with that curriculum. In addition, the State must promote the use of appropriate accommodations to increase the number of students with the most significant cognitive disabilities who are tested against grade-level achievement standards. Finally, the State must ensure that teachers and other staff know how to administer assessments, including how to use appropriate accommodations, for students with the most significant cognitive disabilities.

Proposed regulations: Section 200.6 would be amended to allow a State to develop and implement modified academic achievement standards (defined by the State pursuant to proposed § 200.1(e)(1)) to assess students with disabilities who meet the criteria in proposed § 200.1(e)(2).

Proposed § 200.6(a)(3) would allow a State to use its regular assessment, with accommodations if necessary, or an alternate assessment, provided the assessment—

- Is aligned with the State's grade-level content standards;
- Yields results that measure the achievement of students separately in both reading/language arts and mathematics relative to the State's modified academic achievement standards;
- Meets the requirements under §§ 200.2 and 200.3, including validity, reliability, and high technical quality; and
- Fits coherently in the State's overall assessment system required under § 200.2.

Proposed § 200.6(a)(4)(iii) would require a State to report separately on the percentage of students with disabilities taking assessments based on modified achievement standards. Finally, the proposed regulations would move several similar existing provisions to the same location in the regulations. Current § 200.6(a)(2)(iii)(D) and (E), regarding increasing accommodations and teacher training to ensure that more students with disabilities can take a State's regular assessments, would be moved to § 200.6(a)(1)(ii). Current § 200.6(a)(2)(iii)(C), regarding documenting that students with the most significant cognitive disabilities are, to the extent possible, included in the general curriculum, would be moved to § 200.6(a)(2)(iii).

Reasons: The proposed amendments to § 200.6 acknowledge the appropriateness of allowing a small percentage of students with disabilities to be assessed based on modified academic achievement standards aligned with the State's grade-level academic content standards. The proposed amendment does not limit the number or percentage of students who may take assessments based on modified achievement standards defined pursuant to § 200.1(e) as determined appropriate by their IEP teams.

The format of the assessment is less critical than the content of the modified academic achievement standards. Modified achievement standards may be expressed in various forms: for example, as scores from an assessment limited to ''core content and achievement'' expectations; or as results from an assessment that includes non-traditional items based on grade-level content. The critical characteristic is that an assessment based on modified achievement standards clearly reflects grade-level content standards even if the breadth or depth of those standards is reduced or the format or design is different.

The current Title I regulations do not prohibit the use of out-of-level assessments in all cases. They may be used to assess students with the most significant cognitive disabilities if they are aligned with a State's alternate achievement standards that meet the requirements of current § 200.1(d). However, under proposed § 200.1(e) and § 200.6, States would not be permitted to use an out-of-level test to measure the achievement of students with disabilities based on modified achievement standards. The proposed regulations require that any assessment based on modified achievement standards must meet the grade-level alignment requirements of § 200.1(e)(1), and an out-of-level assessment, by definition, cannot meet these requirements because it is not aligned with the content being taught at the grade-level in which the student is enrolled. It is not acceptable, for example, simply to assess a child who may be reading at a third-grade level using a third-grade assessment when the child is actually enrolled in the sixth grade and expected to be receiving grade-level content.

Even though modified achievement standards differ from grade-level achievement standards, the following protections in the regulation are designed to prevent students with disabilities from being left behind and to ensure that these students continue to receive challenging, grade-level instruction:

1. The modified achievement standards must be aligned to grade-level content standards. Although the breadth or depth of the standards may be reduced, it is grade-level content standards, not ''extended'' standards or instructional-level standards, that must be the basis of the assessment and the modified achievement standards. (Proposed § 200.1(e)(1)(i)). If a State's content standards include 20 different statements of what a student should know, it would not be appropriate to reduce the number of standards assessed on modified achievement standards to address only a few of those content standards. Although the Department will not set a specific numerical goal of how many standards should be addressed, we note that the modified achievement standards will be peer-reviewed and we expect States to establish meaningful academic expectations for all students.

2. The student receives instruction based on grade-level content standards. (Proposed § 200.1(e)(1)(ii) and (2)(iii)).

3. ''Proficient'' performance on modified achievement standards does not preclude a student from earning a regular high school diploma. (Proposed § 200.1(e)(1)(iii)).

A State may assess achievement based on modified achievement standards in several ways, either by designing an entirely new assessment, or by modifying an existing grade-level assessment. Modifications might include:

- Changes to content, such as coverage of a reduced number of grade-level content standards that have been identified by the State as essential for progress to the next grade.
- Changes to test format or administration, such as modified item format or response options, or use of only selected portions of the assessment.

Regardless of the method employed, a State must limit the use of modified achievement standards to the appropriate group of students. As proposed by these regulations, the State must use a documented standard-setting procedure. Results based on modified achievement standards must be valid and reliable to be used as a component in AYP determinations. Results would also need to be clearly explained to parents in terms of student competencies represented by labels such as ''basic'' or ''proficient.''

Section 200.7 Disaggregation of Data

Statute: Section 1111(b)(2)(C)(iv) of Title I requires a State's definition of AYP to measure the progress of specific subgroups of students, including students with disabilities, unless the number of students in a category is insufficient to yield statistically reliable information.

Current regulations: Section 200.7(a)(1) of the Title I regulations prohibits a State from using disaggregated data for one or more subgroups to report achievement results or to identify schools in need of improvement, corrective action, or restructuring if the number of students in those subgroups is insufficient to yield statistically reliable information. Section 200.7(a)(2) requires a State to determine, based on sound statistical methodology, the minimum number of students sufficient to yield statistically reliable information for each purpose for which disaggregated data are used.

Proposed regulations: Section 200.7(a)(2) would be amended to prohibit a State from establishing a different minimum number of students for separate subgroups, regardless of whether the State chooses to implement modified achievement standards. In other words, a State would no longer be able to set a higher minimum number for the subgroup of students with disabilities, for example, than it sets for all its students or for its other subgroups. As another example, the proposed regulation would restrict States from setting a higher minimum group size for limited English proficient (LEP) students.

Reasons: Prior to the implementation of the regulations on alternate achievement standards for students with the most significant cognitive disabilities and the announcement of these proposed regulations, a State did not have much flexibility in measuring the achievement of students with disabilities for AYP purposes. Because of ongoing concerns about how accurately State assessments measure the achievement of a very heterogeneous group of students (many of whom were assessed with a range of accommodations and modifications to the regular assessment), some States requested permission to use a larger minimum number of students—group size—for their students with disabilities subgroup. In support of their request, these States argued that a larger group size for this subgroup of students would account for the challenges of measuring their achievement. States also requested to set a higher minimum group size for LEP students for similar reasons.

Setting a different group size, however, can lead to unintended consequences, such as manipulating the number of LEP or special education students in a particular school to ensure that the school will not be specifically held accountable for those students. Once these proposed regulations are implemented, we believe that States will have sufficient flexibility to measure the achievement of students with disabilities appropriately and will no longer need a different group size for this subgroup. States will be able to use different achievement standards for approximately thirty percent of students with disabilities, which is a significant change in how those students are assessed. States have also been offered flexibility in including the scores of LEP students who have recently arrived in the United States, as well as to count in the LEP subgroup for two years the scores of students who exit the LEP category. We believe that, in order to ensure that schools are held accountable for the achievement of LEP students and students with disabilities, the use of differentiated group sizes for purposes of measuring AYP must end.

Section 200.13 Adequate Yearly Progress in General

Statute: Under section 1111(b)(2)(B) of Title I of the ESEA, each State must define what constitutes AYP of the State, and of all public elementary and secondary schools and LEAs in the State, toward enabling all students to meet the State's student academic achievement standards. This definition must apply the same high standards of academic achievement to all public elementary and secondary school students in the State, be statistically valid and reliable, and measure progress based primarily on the State's academic assessments. AYP must also include measurable objectives for specific subgroups of students, including students with disabilities. To make AYP, a school must: meet or exceed the State's annual measurable objectives with respect to all students and students in each subgroup; test at least 95 percent of all students and of the students in each subgroup enrolled in the school; and make progress on the other academic indicators determined by the State.

Current Regulations: The current Title I regulations in § 200.13 require that each State demonstrate in its State plan what constitutes AYP of the State and of all public elementary and secondary schools and LEAs in the State in a

manner that applies the same high standards of achievement to all public school students; is statistically valid and reliable; results in continuous and substantial academic improvement for all students; measures the progress of all public schools, LEAs, and the State based primarily on the State's academic assessment system; measures progress separately for reading/language arts and for mathematics; is the same for all public schools and LEAs in the State; and applies the same annual measurable objectives for all students and for all identified subgroups described in § 200.13(b)(7)(ii).

Section 200.13(c) contains the rules for calculating AYP with respect to students with the most significant cognitive disabilities. It permits a State to include proficient and advanced scores of those students on assessments based on alternate achievement standards in determining AYP, subject to a 1.0 percent cap at the LEA and State levels. There is no cap at the school level. A State may request from the Secretary an exception to exceed the 1.0 percent cap if it can document that the incidence of students with the most significant disabilities exceeds 1.0 percent due to such circumstances as school, community, or health programs that have drawn large numbers of families of students with the most significant cognitive disabilities or a student population so small that it would take only a very few students to exceed the 1.0 percent cap. A State may grant an LEA's request for an exception to exceed the 1.0 percent cap under similar conditions.

Proposed Regulations: Proposed § 200.13(c) would specify acceptable uses of modified achievement standards for students with disabilities who meet the criteria in proposed § 200.1(e)(2) for the purpose of determining AYP. Specifically, proposed § 200.13(c)(2)(ii) would permit a State to include in its calculation of AYP the proficient and advanced scores of students with disabilities on assessments based on modified achievement standards, provided the number of such scores does not exceed 2.0 percent of all students in the grades assessed in reading/language arts and mathematics, separately, at the LEA and State levels. Although the 2.0 percent cap would not apply at the school level, schools should be mindful of the LEA limit, which may restrict the number of proficient scores for any one school that the LEA or State may include in its AYP calculations. Proposed § 200.13(c)(3) would permit a State's or LEA's proficient and advanced scores on assessments based on modified achievement standards to exceed 2.0 percent of all students in the grades assessed, without the need for an exception at the LEA level, if the number of proficient and advanced scores on assessments based on alternate achievement standards in § 200.1(d) is less than 1.0 percent, provided the number of proficient and advanced scores based on modified and alternate achievement standards combined does not exceed 3.0 percent of all students in the grades assessed.

Proposed § 200.13(c)(4) would provide that a State would no longer be able to request from the Secretary an exception to exceed the 1.0 percent cap on proficient and advanced scores based on alternate achievement standards, nor would the State be able to request an exception to exceed the 2.0 percent cap on proficient and advanced scores based on modified achievement standards. A State would still be able to grant an exception to an LEA to exceed the 1.0 percent cap on proficient and advanced scores based on alternate achievement standards if the LEA meets certain requirements. A State would not be able, however, to grant an exception to an LEA to exceed the 2.0 percent cap on proficient and advanced scores based on modified academic achievement standards. If a State grants an LEA an exception to exceed the 1.0 percent cap, the total number of students with disabilities in that LEA whose proficient and advanced scores may be included in calculating AYP would thus exceed 3.0 percent by the amount of the exception. However, the State would not be permitted to exceed its overall cap of 3.0 percent based on exceptions it had granted to LEAs. The proposed regulation also would provide that, for any proficient and advanced scores of students with the most significant cognitive disabilities that exceed the caps and authorized exceptions, a State would need to count those scores as non-proficient and redistribute them among schools and LEAs responsible for students with disabilities who are assessed based on alternate or modified achievement standards.

The following table provides a summary of the circumstances in which we are proposing that a State or LEA would be permitted to exceed the 1% and 2% caps.

WHEN CAN A STATE OR LEA EXCEED THE 1% AND 2% CAPS?

	Alternate achievement standards—1% Cap	Modified achievement standards—2% Cap	Alternate and modified achievement standards—3% Cap
State	Never	Only if State is below 1% cap, but cannot exceed 3% cap.	Never.
LEA	Only if granted an exception by the SEA.	Only if LEA is below 1% cap. If not below 1% cap, never.	Only if granted an exception to the 1% cap by the SEA, and only by the amount of the exception.

Reasons: To ensure that modified achievement standards are used appropriately, the proposed regulations would set a cap of 2.0 percent on proficient and advanced scores based on modified achievement standards that may be included in AYP determinations. In addition to the guidelines in proposed § 200.1(f), a numerical limit protects students from being held to lower standards. In establishing the 1.0 percent cap on proficient and advanced scores based on alternate achievement standards for students with the most significant cognitive disabilities, we primarily relied upon disability incidence rate data. Incidence rate data, however, are not as helpful in establishing a cap on the number of students who would be appropriately assessed based on modified achievement standards because students assessed based on modified achievement standards are less likely to be predominantly from a few disability categories, as is the case with students with the most significant cognitive disabilities. Therefore, in order to set an appropriate cap, we considered other sources of data from research and State experiences. This numerical limit is set at 2.0 percent because we do not believe it is necessary or appropriate for more than 3.0 percent of students to be assessed based on alternate or modified

achievement standards. For example, the Department reviewed several studies that indicate 2.0 percent is an appropriate cap when States, districts, and schools work to ensure that students receive high-quality educational services and interventions.[1] In particular, research that has recently been summarized by Reid Lyon, Jack Fletcher, Lynn Fuchs and Vinata Chabra in a literature review (currently in press) indicates that a 2.0 percent cap is appropriate, based on the percent of students who may not reach grade-level achievement standards within the same time frame as other students, even after receiving the best-designed instructional interventions from highly trained teachers.[2]

Further, we believe 2.0 percent is a reasonable cap when one takes into consideration that the cap does not need to equal the total number of students that may meet the criteria for this assessment. The cap is only a cap on the number of proficient scores that may be included in calculating AYP. In addition, we expect that over time State assessments will improve, as well as interventions and services for students with disabilities. The gains we have seen thus far when disabled students are expected to meet high standards should continue.

The proposed regulations would not permit States to request exceptions to the 1.0 or 2.0 percent caps. Under our current regulations that provide flexibility with respect to students with the most significant cognitive disabilities, we allow States to request an exception to exceed the 1.0 percent cap if they can demonstrate that there are exceptional circumstances in their State that would account for higher numbers of students with the most significant cognitive disabilities. However, with the proposed modified achievement standards and a 2.0 percent cap, we do not believe it is necessary for States to exceed the 1.0 percent cap. The vast majority of students with disabilities can, and should, be assessed based on grade-level achievement standards and, therefore, we believe it is not necessary or appropriate at the State level for the proficient and advanced scores of more than 3.0 percent of students who are assessed based on alternate or modified achievement standards to count in AYP determinations. We recognize, however, that there may still be significant local variation in the number of students with the most significant cognitive disabilities, and that is why we are proposing to allow States to continue granting LEAs exceptions to the 1.0 percent cap on proficient scores based on alternate achievement standards.

We know that it may be difficult to distinguish with absolute precision between the achievement levels of the two groups of students (students taking assessments based on modified achievement standards and students taking an alternate assessment based on alternate achievement standards). Therefore, the proposed regulations would permit States and LEAs to include proficient and advanced scores based on modified achievement standards in excess of 2.0 percent, if the State's or LEA's proficient and advanced scores on alternate assessments based on alternate achievement standards are less than 1.0 percent of the students assessed, and so long as the total number of proficient and advanced scores based on modified and alternate standards does not exceed 3.0 percent. No exception is needed in this instance.

We would like to underscore that the decision about which achievement standards to use when evaluating the achievement of a student with disabilities is an individual determination made by the IEP team, following the State guidelines. The Department expects that there will be States that will assess fewer than 1.0 percent of their students based on alternate achievement standards or fewer than 2.0 percent based on modified achievement standards.

Section 200.20 Making Adequate Yearly Progress

Statute: Under Section 1111(b)(2)(I) of Title I, a school or LEA makes AYP if each group of students described in section 1111(b)(2)(C)(v) of the statute meets or exceeds the State's annual measurable objectives in reading/language arts and mathematics, separately; not less than 95 percent of the students in each group participates in the State assessments required in section 1111(b)(3); and the school or LEA as a whole meets the other academic indicators selected by the State. If students in any group do not meet the State's annual measurable objectives, a school or LEA makes AYP if the percentage of students in that group who are not proficient decreased by 10 percent from the preceding school year and the group made progress on one or more of the State's other academic indicators. Section 1111(b)(2)(J) of Title I permits a State, in determining whether schools or LEAs are making AYP, to establish a uniform procedure for averaging data from one school year with data from one or two preceding school years, and to average data across grades in the school or LEA. If a State wishes to use a uniform averaging procedure, it is not required to include the new NCLB assessments in its annual AYP decisions until the State has acquired two or three years of data from those assessments.

Current regulations: Section 200.20 of the Title I regulations implements these statutory provisions. In addition, with respect to any student who takes the State assessment for a particular subject or grade level more than once, § 200.20(c)(3) requires a State to use the student's results from the first administration of the assessment to determine AYP.

Proposed regulations: Proposed § 200.20 would make several significant changes. First, current § 200.20(c)(3), which requires a State to use the student's results from the first administration of the State assessment to determine AYP, would be removed. With this removal, a State could administer its State assessments to a student more than once and include the student's best score in determining AYP. This practice, however, could not result in delaying the State's ability to make timely AYP determinations.

Second, proposed § 200.20(c)(3) would make clear that, to count a student who is assessed based on alternate or modified achievement standards as a participant for purposes of meeting the 95 percent participation requirement, a State must have guidelines for IEP teams to use to determine appropriately which students should participate in assessments based on alternate or modified achievement standards in accordance with proposed § 200.1(f). If a State does not have guidelines or those guidelines do not meet the requirements in § 200.1(f), students inappropriately assessed based on alternate or modified achievement standards would be considered non-participants for purposes of calculating participation rates.

Third, proposed § 200.20(f) would be added to provide additional flexibility in calculating AYP for the students with disabilities subgroup. Under this proposed section, a State would be able to include, for a period of up to two

[1] For example, see: McMaster, K.L., Fuchs, D., Fuchs, L.S., & Compton, D.L. (2005). Responding to nonresponders: An experimental field trial of identification and intervention methods. *Exceptional Children,* 71, 445–463; Torgensen, J.K., Alexander, A.W., Wagner, R.K., Rashotte, C.A., Voeller, K.K.S., & Conway, T. (2001). Intensive remedial instruction for children with severe reading disabilities; Immediate and long-term outcomes from two instructional approaches. *Journal of Learning Disabilities,* 34, 33–58.

[2] Lyon, G.R., Fletcher, J. M., Fuchs, L.S., & Chhabra, V. (in press). Learning Disabilities. In E. Mash & R. Barkley (Eds.), *Treatment of Childhood Disorder* (2nd ed.). New York: Guilford Press.

years, the scores of students who were previously identified with a disability under section 602(3) of the IDEA, but who have exited from special education services. In addition, if a State includes the scores of these students in AYP, the State would not be required to include those students in the students with disabilities subgroup in determining if the number of students with disabilities is sufficient to yield statistically reliable information under § 200.7(a). As indicated in proposed § 200.20(f)(3), for the purpose of reporting information on report cards under section 1111(h) of the ESEA, a State and its LEAs would be able to include the scores of former students with disabilities as part of the students with disabilities subgroup for the purpose of reporting AYP, but would not be able to include the scores of former students with disabilities as part of the students with disabilities subgroup in reporting any other information under section 1111(h) of the ESEA.

Reasons: The Secretary proposes to remove current § 200.20(c)(3), which requires a State to use a student's results from the first administration of the State assessment to determine AYP, because the Secretary believes that it is possible to grant flexibility to States to determine which score to count in AYP determinations without compromising the integrity of the State accountability system or the timing of AYP decisions. Since the publication of this regulation on December 2, 2002, the Secretary has learned from several States that they wish to administer their assessments to students more than once during the school year for differing reasons. For example, one State is required by law to offer multiple opportunities to students to take and pass the State-mandated graduation exam. In taking advantage of this flexibility, we emphasize that States should take care not to establish an administrative schedule in which students are repeatedly taking the State assessment in order to improve their scores.

Proposed § 200.20(c)(3) clarifies that, to consider a student as a participant for AYP purposes under the State accountability system, the student must be assessed with assessments that meet the requirements of section 1111 of Title I of the ESEA and the Title I regulations. That is, the student must be assessed based on grade-level achievement standards unless the student qualifies under § 200.1(d) or proposed § 200.1(e)(2) to be assessed based on alternate or modified achievement standards, respectively. To determine which students qualify to be assessed based on alternate or modified standards, each State must have guidelines that meet the requirements of § 200.1(f)(1) to instruct its IEP teams. The current Title I regulations permit only students with the most significant cognitive disabilities to be assessed based on alternate achievement standards. These regulations propose to permit a second group of students with disabilities to be assessed using modified achievement standards. However, both current and proposed regulations make clear that only certain students may be appropriately assessed based on either standard. Therefore, if a State has IEP team guidelines in place that permit the use of alternate achievement standards for students without the most significant cognitive disabilities, or if the guidelines are used to determine that modified achievement standards are appropriate for students who do not meet the requirements of proposed § 200.1(e)(2), those students would not be considered participants when determining whether the 95 percent participation requirement has been met. For example, if a State decides to measure the performance of a population of students based on modified achievement standards that is broader than the group of students described in proposed § 200.1(e)(2), only those students who meet the criteria under proposed § 200.1(e)(2) would be considered participants for AYP purposes.

The proposed amendments to § 200.20(f) would allow a State, in determining AYP for the students with disabilities subgroup, to include in that subgroup any student tested in the current year who had exited special education within the prior two-year period. Students are identified as a student with a disability based on two factors: first, that they have a disability, as defined under the IDEA; and second, that they need special education and related services. Educators and parents consider it a success when students succeed to such an extent that special education services are no longer needed. Because students with disabilities exit this subgroup once special education services are no longer needed, school assessment results for that subgroup do not reflect the gains that these students with disabilities have made in academic achievement or the work that schools and teachers have done to achieve this success. Recognizing this, the proposed regulations would allow a State, for purposes of making AYP determinations, to include the scores of students previously identified as students with disabilities within the subgroup for up to two years after they no longer receive IDEA services. States may not include the scores of these students for reporting purposes under Section 1111(h) apart from AYP, because it is very important to have information about the achievement of students with disabilities who are currently receiving services under the IDEA.

Finally, to further ensure a coordinated administration of Title I and IDEA, we proposed to define in § 200.103 *student with a disability* to mean child with a disability as defined in section 602(3) of the IDEA.

Part 300

Section 300.160 Participation in Assessments

Statute: Under section 612(a)(16) of the IDEA, a State must ensure that all children with disabilities are included in all general State and district-wide assessments with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs. The State (or LEA, for district-wide assessments) must develop guidelines for the provision of appropriate accommodations and must develop and implement guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in the regular assessments, even with accommodations, as indicated in their IEPs. A State's alternate assessment guidelines must provide for alternate assessments that are aligned with the State's challenging academic content and achievement standards and, if the State has adopted alternate academic achievement standards permitted under the Title I regulations, measure the achievement of children with disabilities against those standards.

The State (or LEA, for a district-wide assessment) must make available to the public data on the participation of children with disabilities and report to the public, with the same frequency and detail as it reports on the assessment of nondisabled children,

- The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations to participate in the regular assessment,
- The number of children with disabilities participating in alternate assessments based on grade-level academic achievement standards, and
- The number of children with disabilities participating in alternate assessments based on alternate academic achievement standards.

A State must also report on the performance of children with disabilities on regular assessments and on alternate assessments, compared to the achievement of all children.

Reporting on performance is not required if the number of children with disabilities is not sufficient to yield statistically reliable information or if reporting that information would reveal personally identifiable information. The State (or LEA, in the case of a district-wide assessment) must, to the extent feasible, use universal design principles in developing and administering any State or district-wide assessments.

Current regulations: On June 21, 2005, we issued a notice of proposed rulemaking (NPRM) to implement section 612 and other provisions of the IDEA, as recently amended and authorized by the Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108–446. The IDEA NPRM included proposed language in § 300.160, that would implement the provisions of section 612(a)(16) of the IDEA regarding assessments, and we indicated in the preamble to the IDEA NPRM that proposed § 300.160 would replace §§ 300.138 and 300.139 of the current regulations. The language we propose in this notice would supercede the language we proposed in the IDEA NPRM.

Proposed regulations: Proposed § 300.160(a) and (b)(1) would incorporate the statutory requirements regarding the participation of children with disabilities in State and district-wide assessments and the development of guidelines for the provision of appropriate accommodations. Proposed § 300.160(b)(2) would require that State (or, in the case of a district-wide assessment, LEA) guidelines require that each child be validly assessed and identify any accommodations that would result in an invalid score. Consistent with the changes to the Title I regulations regarding modified achievement standards, proposed § 300.160(c) would require that States that have adopted modified academic achievement standards as permitted under the Title I regulations have guidelines for the participation of children with disabilities in assessments based on those modified achievement standards. Proposed § 300.160(d) would incorporate the statutory requirements regarding alternate assessment guidelines and requirements for conducting alternate assessments. It also would clarify that the requirements for alternate assessments aligned to challenging academic content standards and academic achievement standards and alternate assessments based on alternate academic achievement standards apply only to assessments of student academic progress under Title I of the ESEA.

Proposed § 300.160(e) would incorporate the statutory requirements regarding reporting on assessments, would clarify in proposed § 300.160(e)(1) that reports must include only the number of children provided accommodations that did not invalidate the score, and would add a requirement, in proposed § 300.160(e)(4), that States (or LEAs, in the case of district-wide assessments) also must report on the number of children with disabilities who are assessed based on modified academic achievement standards. Proposed § 300.160(f) would adopt the statutory requirement regarding use of universal design principles in developing and administering assessments. We are also proposing to revise the authority citation for part 300 to be consistent with the proposed regulations in the IDEA NPRM.

Reasons: Under IDEA, States have a duty to ensure that children with disabilities are validly assessed. The House Committee Report on the reauthorization of the IDEA emphasizes the importance of ensuring that accommodation guidelines identify accommodations that do not affect test validity:

> The bill also makes clear that States have an affirmative obligation to determine what types of accommodations can be made to assessments while maintaining their reliability and validity * * *. The Committee is intent on ensuring that each child with a disability receives appropriate accommodations, but is equally intent that these accommodations not invalidate the particular assessment. In developing the guidance on accommodations, the Committee encourages States to work with test publishers, assessment experts, special education teachers, and other experts to maximize the opportunities for children with disabilities to participate in regular assessments.[3]

Similarly, the Senate Committee Report acknowledges that appropriate accommodations to a test will not affect the test's validity.[4]

Tests administered with accommodations that do not maintain test validity are not measuring academic achievement under the State's assessment system. Under the reauthorized IDEA, each IEP now must indicate ''appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments.''[5] State and LEA guidelines thus need to identify, for IEP teams, those accommodations that will maintain test validity. Similarly, under Title I, the concept of ''appropriate accommodations'' in the context of assessments must be thought of as accommodations that are needed by the individual child and that maintain test validity. The Title I regulations would only consider a student to be a participant for AYP purposes if his or her assessment results in a valid score.

If a State adopts modified academic achievement standards under Title I, it also must have guidelines for the participation of children with disabilities in assessments based on those modified academic achievement standards. State guidelines will ensure that IEP teams in that State have information about the range of methods of assessment under the State assessment system when making assessment decisions for individual children. Consistency in the assessment and reporting requirements of children with disabilities under Title I and IDEA will reinforce NCLB's and IDEA's shared goal of high expectations and accountability for all students and will avoid confusion among parents, teachers and administrators.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering the Title I and IDEA programs effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section under the heading Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

[3] H. Rep. No. 108–77, at 97 (2003).

[4] S. Rep. No. 108–185, at 30 (2003).

[5] 20 U.S.C. 1414(d)(1)(A)(VI)(aa).

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1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering the Title I and IDEA programs effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section under the heading Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

These proposed regulations would not add significantly to the costs of implementing either the Title I or IDEA programs or alter the benefits that the Secretary believes will be obtained through successful implementation.

As noted elsewhere in this notice, the proposed regulations would provide States with additional flexibility regarding State, LEA, and school accountability for the achievement of students with disabilities who qualify to be assessed based on modified achievement standards and with respect to students with disabilities who no longer receive special education services. The major benefit of this approach is that it will permit States to develop and implement modified achievement standards and aligned assessments for the group of students with disabilities, for whom, according to recent research, assessments aligned with modified achievement standards are appropriate, and then to use the results from those assessments in making AYP determinations. Implementation of these assessments and standards would be an element of State and local efforts to improve educational outcomes for this group of students, consistent with the principles and objectives of NCLB. The benefits of higher educational achievement and better outcomes for the students in question are the same as those that are obtained for students in general.

Economists and other social scientists have found repeatedly that better education results in major benefits, both economic and non-economic, not only for the individuals who receive it but for society as a whole. Nations that invest successfully in better education enjoy higher levels of growth and productivity, and a high-quality education is an indispensable element of a strong economy and a successful civil society. Census Bureau data demonstrate that individual income increases with the level of educational attainment. More educated individuals also tend to have higher lifetime earnings and higher savings rates, and to lead healthier lives.

As the proposed regulations make clear, a State could elect to develop new modified achievement standards and new assessments to measure achievement based on those standards, but no State would ever be required to do so. Thus, the proposed regulations would impose no direct costs on States, LEAs, or other entities or individuals.

Most implementation costs will stem from the underlying statute, which requires each State to have academic content and academic achievement standards and aligned assessments that measure the achievement of all students, including students with disabilities. States that decide to adopt modified achievement standards and implement assessments aligned with those standards will be able to use funds from Title I, Title VI State Assessment Grants, and IDEA to finance those activities. The costs of developing and implementing assessments vary considerably but are modest when compared to the amounts available under Federal programs that States can draw on for test development and implementation. In a 2003 report titled, ''Title I: Characteristics of Tests Will Influence Expenses: Information Sharing May Help States Realize Efficiencies,'' the Government Accountability Office found that the State of Massachusetts had spent approximately $200,000 to develop each of its assessments, while Texas had spent $60,000 and Maine had spent $22,000 for their assessments.[6] By comparison, the fiscal year 2005 appropriation for Title I Grants to Local Educational Agencies was approximately $12.7 billion, and States could reserve approximately 1 percent of this amount for administrative expenses, including paying the costs of developing assessments. The appropriation for IDEA Grants to States was $11.4 billion, and States could reserve more than $900 million for such activities as the development and provision of appropriate accommodations and assessments of children with disabilities under Title I. For State Assessment Grants, the appropriation was $412 million. The Department believes that the regulations will not impose a financial burden that States and LEAs will have to meet from non-Federal sources.

For purposes of the Unfunded Mandates Reform Act of 1995, these regulations do not include a Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any one year.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 200.13 Adequate yearly progress).
- Could the description of the proposed regulations in the ''Supplementary Information'' section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

These provisions require States and LEAs to take certain actions to improve

[6] U.S. Government Accountability Office, Report 03–389, pg. 17.

student academic achievement. The Department believes that these activities will be financed through the appropriations for Title I and IDEA and that the responsibilities encompassed in the law and regulations will not impose a financial burden that States and LEAs will have to meet from non-Federal resources.

Paperwork Reduction Act of 1995

Sections 200.6 and 300.160 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Improving the Academic Achievement of the Disadvantaged and Assistance to States for the Education of Children With Disabilities

The proposed regulations make changes in reporting requirements already required under both Title I, Part A, of the ESEA and the IDEA for States that voluntarily take advantage of the new flexibility. States already report the number of students with disabilities participating in assessments and the type of assessments these students take. The proposed regulations would add one additional category for students with disabilities who are assessed based on modified academic achievement standards. States would be required annually to report separately the number and percentage of students with disabilities taking assessments based on the modified achievement standards under § 200.1 and § 300.160(e). Each of the 50 SEAs, Puerto Rico and the District of Columbia would report this data a single time each year. However, there is no appreciable burden associated with the collection as States already report on the number and percentage of students with disabilities participating in State assessments under 1810–0614 and 1880–0541. The total number of students with disabilities being reported does not change as a result of this collection. The cost for this collection also is minimal as it is simply a matter of coding on the test document, something the SEA is already doing to report the data under 1810–0614 and 1880–0541. We estimate annual reporting and recordkeeping burden for this collection of information to average 1 hour for 52 respondents.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department's representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of this proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring 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.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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(Catalog of Federal Domestic Assistance Numbers: 84.010 Improving Programs Operated by Local Educational Agencies; 84.027 Assistance to States for the Education of Children with Disabilities)

List of Subjects

34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Education of children with disabilities, Education of disadvantaged children, Elementary and secondary education, Eligibility, Family-centered education, Grant programs—education, Indians education, Institutions of higher learning, Local educational agencies, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies.

34 CFR Part 300

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private Schools, Reporting and recordkeeping requirements.

Dated: December 12, 2005.

Margaret Spellings,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 200 and 300 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

1. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C. 6301 through 6578, unless otherwise noted.

2. Section 200.1 is amended by:

A. Revising paragraphs (a)(1), (a)(2), and (b)(1)(i).

B. Redesignating paragraphs (e) and (f) as paragraphs (g) and (h), respectively.

C. Adding new paragraphs (e) and (f).

The revisions and additions read as follows:

§ 200.1 State responsibilities for developing challenging academic standards.

(a) * * *

(1) Be the same academic standards that the State applies to all public schools and public school students in the State, including the public schools and public school students served under subpart A of this part, except as

provided in paragraphs (d) and (e) of this section;

(2) Include the same knowledge, skills, and levels of achievement expected of all students, except as provided in paragraphs (d) and (e) of this section; and

* * * * *

(b) * * *

(1) * * *

(i) Specify what all students are expected to know and be able to do, except as provided in paragraphs (d) and (e) of this section;

* * * * *

(e) *Modified academic achievement standards.* (1) For students with disabilities under section 602(3) of the Individuals with Disabilities Education Act (IDEA) who meet the State's criteria under paragraph (e)(2) of this section, a State may, through a documented and validated standards-setting process, define modified academic achievement standards, provided those standards—

(i) Are aligned with the State's academic content standards for the grade in which the student is enrolled, although the modified academic achievement standards may reflect reduced breadth or depth of grade-level content;

(ii) Provide access to grade-level curriculum; and

(iii) Do not preclude a student from earning a regular high-school diploma.

(2) A State must include the following criteria in the guidelines for defining which students with disabilities are eligible to be assessed based on modified academic achievement standards that the State establishes under paragraph (f) of this section:

(i) The student's disability has precluded the student from achieving grade-level proficiency, as demonstrated by such objective evidence as—

(A) The State's assessments described in § 200.2; or

(B) Other assessment data that can validly document academic achievement.

(ii)(A) The student's progress in response to high-quality instruction, including special education and related services designed to address the student's individual needs, is such that the student is not likely to achieve grade-level proficiency within the year covered by the student's individualized education program (IEP).

(B) The determination of the student's progress must be based on multiple measurements, over a period of time, that are valid for the subjects being assessed.

(iii) The student is receiving instruction in the grade-level curriculum for the subjects in which the student is being assessed.

(3) A student eligible to be assessed based on modified academic achievement standards may be in any of the 13 disability categories listed in the IDEA.

(4) A student may be assessed based on modified academic achievement standards in one or more subjects for which assessments are administered under § 200.2.

(5) The decision to assess a student based on modified academic achievement standards must be reviewed annually by the student's IEP team to ensure that those standards remain appropriate.

(f) *State guidelines.* If a State defines alternate or modified academic achievement standards under paragraph (d) or (e) of this section, the State must—

(1) Establish and ensure implementation of clear and appropriate guidelines for IEP teams to apply in determining—

(i) Students with the most significant cognitive disabilities who will be assessed based on alternate academic achievement standards; and

(ii) Students with disabilities who meet the criteria in § 200.1(e)(2) who will be assessed based on modified academic achievement standards; and

(2) Ensure that parents of students selected for assessment based on alternate or modified academic achievement standards under the guidelines in this paragraph (f) are informed that their child's achievement will be measured based on alternate or modified academic achievement standards.

* * * * *

3. Section 200.6 is amended by:

A. Revising paragraph (a)(1) and (a)(2)(iii).

B. Adding paragraphs (a)(3) and (a)(4).

The revisions and additions read as follows:

§ 200.6 Inclusion of all students.

* * * * *

(a) *Students eligible under IDEA and Section 504.* (1) *Appropriate accommodations.* (i) A State's academic assessment system must provide—

(A) For each student with a disability, as defined under section 602(3) of the IDEA, appropriate accommodations that the student's IEP team determines are necessary to measure the academic achievement of the student relative to the State's academic content and academic achievement standards for the grade in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c); and

(B) For each student covered under section 504 of the Rehabilitation Act of 1973, as amended (Section 504), appropriate accommodations that the student's placement team determines are necessary to measure the academic achievement of the student relative to the State's academic content and academic achievement standards for the grade in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c).

(ii) A State must—

(A) Develop, disseminate information on, and promote the use of appropriate accommodations to increase the number of students with disabilities who are tested against grade-level academic achievement standards; and

(B) Ensure that regular and special education teachers and other appropriate staff know how to administer assessments, including making appropriate use of accommodations, for students with disabilities and students covered under Section 504.

(2) * * *

(iii) If a State permits the use of alternate assessments that yield results based on alternate academic achievement standards, the State must document that students with the most significant cognitive disabilities are, to the maximum extent possible, included in the general curriculum.

(3) *Assessments that measure modified academic achievement standards.* A State may use the assessments described in paragraph (a)(1) or (2) of this section to assess students with disabilities based on modified academic achievement standards pursuant to § 200.1(e)(1), provided the assessments—

(i) Are aligned with the State's grade-level academic content standards;

(ii) Yield results that measure the achievement of those students separately in reading/language arts and mathematics relative to the modified academic achievement standards;

(iii) Meet the requirements in §§ 200.2 and 200.3, including the requirements relating to validity, reliability, and high technical quality; and

(iv) Fit coherently in the State's overall assessment system under § 200.2.

(4) *Reporting.* A State must report separately, under section 1111(h)(4) of the Act, the number and percentage of students with disabilities taking—

(i) Regular assessments described in § 200.2;

(ii) Regular assessments with accommodations;

(iii) Assessments based on the modified academic achievement standards described in § 200.1(e).

(iv) Alternate assessments based on the grade-level academic achievement standards described in § 200.1(c); and

(v) Alternate assessments based on the alternate academic achievement standards described in § 200.1(d).

* * * * *

4. In § 200.7, redesignate paragraph (a)(2) as (a)(2)(i) and add a new paragraph (a)(2)(ii) to read as follows:

§ 200.7 Disaggregation of data.

(a) * * *

(2) * * *

(ii) A State may not establish a different minimum number of students under paragraph (a)(2)(i) of this section for separate subgroups under § 200.13(b)(7)(ii).

* * * * *

5. Section 200.13 is amended by:

A. Revising paragraph (c).

B. Adding an appendix at the end of the section.

The revisions and addition read as follows:

§ 200.13 Adequate yearly progress in general.

* * * * *

(c)(1) In calculating AYP for schools, LEAs, and the State, a State must, consistent with § 200.7(a), include the scores of all students with disabilities.

(2) With respect to scores based on alternate or modified academic achievement standards, a State may include—

(i) The proficient and advanced scores of students with the most significant cognitive disabilities based on the alternate academic achievement standards described in § 200.1(d), provided that the number of those scores at the LEA and at the State levels, separately, does not exceed 1.0 percent of all students in the grades assessed in reading/language arts and in mathematics; and

(ii) The proficient and advanced scores of students with disabilities based on the modified academic achievement standards described in § 200.1(e)(1), provided that the number of those scores at the LEA and at the State levels, separately, does not exceed 2.0 percent of all students in the grades assessed in reading/language arts and in mathematics.

(3) A State's or LEA's number of proficient and advanced scores on the modified academic achievement standards described in § 200.1(e)(1) may exceed 2.0 percent of all students in the grades assessed if the number of proficient and advanced scores on the alternate academic achievement standards described in § 200.1(d) is less than 1.0 percent, provided the number of proficient and advanced scores based on modified and alternate academic achievement standards combined does not exceed 3.0 percent of all students in the grades assessed.

(4) A State may not request from the Secretary an exception permitting it to exceed the caps on proficient and advanced scores based on alternate or modified academic achievement standards under paragraph (c)(2) and (3) of this section.

(5)(i) A State may grant an exception to an LEA permitting it to exceed the 1.0 percent cap on proficient and advanced scores based on the alternate academic achievement standards described in paragraph (c)(2)(i) of this section only if—

(A) The LEA demonstrates that the incidence of students with the most significant cognitive disabilities exceeds 1.0 percent of all students in the combined grades assessed;

(B) The LEA explains why the incidence of such students exceeds 1.0 percent of all students in the combined grades assessed, such as school, community, or health programs in the LEA that have drawn large numbers of families of students with the most significant cognitive disabilities, or that the LEA has such a small overall student population that it would take only a few students with such disabilities to exceed the 1.0 percent cap; and

(C) The LEA documents that it is implementing the State's guidelines under § 200.1(f).

(ii) The State must review regularly whether an LEA's exception to the 1.0 percent cap is still warranted.

(6) A State may not grant an exception to an LEA to exceed the 2.0 percent cap on proficient and advanced scores based on modified academic achievement standards under paragraph (c)(2)(ii) of this section.

(7) In calculating AYP, if the percentage of proficient and advanced scores based on alternate or modified academic achievement standards under § 200.1(d) or (e) exceeds the caps in paragraph (c) of this section at the State or LEA level, the State must do the following:

(i) Consistent with § 200.7(a), include all scores based on alternate and modified academic achievement standards.

(ii) Count as non-proficient the proficient and advanced scores that exceed the caps in paragraph (c) of this section.

(iii) Determine which proficient and advanced scores to count as non-proficient in schools and LEAs responsible for students who are assessed based on alternate or modified academic achievement standards.

(iv) Include non-proficient scores that exceed the caps in paragraph (c) of this section in each applicable subgroup at the school, LEA, and State level.

(v) Ensure that parents of a child who is assessed based on alternate or modified academic achievement standards are informed of the actual academic achievement levels of their child.

* * * * *

Appendix to § 200.13—When Can a State or LEA Exceed the 1% and 2% Caps?

The following table provides a summary of the circumstances in which a State or LEA may exceed the 1% and 2% caps described in § 200.13.

WHEN CAN A STATE OR LEA EXCEED THE 1% AND 2% CAPS?

	Alternate achievement Standards—1% Cap	Modified Achievement Standards—2% Cap	Alternate and Modified Achievement standards—3% Cap
1. State	Never	Only if State is below 1% cap, but cannot exceed 3% cap.	Never.
2. LEA	Only if granted an exeception by the SEA.	Only if LEA is below 1% cap. If not below 1% cap, never.	Only if granted an exception to the 1% cap by the SEA, and only by the amount of the exception.

6. Section 200.20 is amended by:

A. Revising the introductory text of paragraph (a)(1).

B. Revising the introductory text of paragraph (b).

C. Revising the introductory text of paragraph (c)(1).

D. Revising paragraph (c)(3).

E. Adding a new paragraph (f).

The revisions and addition read as follows:

§ 200.20 Making adequate yearly progress.

* * * * *

(a)(1) A school or LEA makes AYP if, consistent with paragraph (f) of this section—

* * * * *

(b) If students in any group under § 200.13(b)(7) in a school or LEA do not meet the State's annual measurable objectives under § 200.18, the school or LEA makes AYP if, consistent with paragraph (f) of this section—

* * * * *

(c)(1) A school or LEA makes AYP if, consistent with paragraph (f) of this section—

* * * * *

(3) To count a student who is assessed based on alternate or modified academic achievement standards described in § 200.1(d) or (e) as a participant for purposes of meeting the requirements of this paragraph, the State must have, and ensure that its LEAs adhere to, guidelines that meet the requirements of § 200.1(f).

* * * * *

(f)(1) In determining AYP for the subgroup of students with disabilities, a State may include, for a period of up to two years, the scores of students who were previously identified under section 602(3) of the IDEA but who have exited from special education services.

(2) If a State, in determining AYP for the subgroup of students with disabilities, includes the scores of the students described in paragraph (f)(1) of this section, the State is not required to include those students in the students with disabilities subgroup in determining if the number of students with disabilities is sufficient to yield statistically reliable information under § 200.7(a).

(3) For the purpose of reporting information on report cards under section 1111(h) of the Act—

(i) A State may include the scores of the former students with disabilities described in paragraph (f)(1) of this section as part of the students with disabilities subgroup for the purpose of reporting AYP at the State level under section 1111(h)(1)(C)(ii) of the Act;

(ii) An LEA may include the scores of the former students with disabilities described in paragraph (f)(1) of this section as part of the students with disabilities subgroup for the purpose of reporting AYP at the LEA and school levels under section 1111(h)(2)(B) of the Act; but

(iii) A State or LEA may not include the scores of former students with disabilities as part of the students with disabilities subgroup in reporting any other information under section 1111(h) of the Act.

7. Section 200.103 is amended by adding a new paragraph (c). The addition reads as follows:

§ 200.103 Definitions.

* * * * *

(c) *Student with a disability* means child with a disability, as defined in section 602(3) of the IDEA.

PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

8. The authority citation for part 300 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3, 1406, 1411–1419, unless otherwise noted.

9. Add a new § 300.160 to read as follows:

§ 300.160 Participation in assessments.

(a) *General.* A State must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

(b) *Accommodation guidelines.* (1) A State (or, in the case of a district-wide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.

(2) The State's (or, in the case of a district-wide assessment, the LEA's) guidelines must —

(i) Require that each child be validly assessed; and

(ii) Identify valid accommodations.

(c) *Assessments based on modified academic achievement standards.* If a State has adopted modified academic achievement standards permitted in 34 CFR 200.1(e), the State must have guidelines for the participation of children with disabilities in assessments based on those modified academic achievement standards.

(d) *Alternate assessments.* (1) A State (or, in the case of a district-wide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations as indicated in their respective IEPs, as provided in paragraph (a) of this section.

(2) The alternate assessments and guidelines in paragraph (d)(1) of this section must provide for alternate assessments that, in the case of assessments of student academic progress under Title I of the ESEA—

(i) Are aligned with the State's challenging academic content standards and challenging student academic achievement standards; and

(ii) If the State has adopted alternate academic achievement standards permitted in 34 CFR § 200.1(d), measure the achievement of children with disabilities against those standards.

(e) *Reports.* An SEA (or, in the case of a district-wide assessment, an LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(1) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.

(2) The number of children with disabilities participating in alternate assessments described in paragraph (d)(2)(i) of this section.

(3) The number of children with disabilities participating in alternate assessments described in paragraph (d)(2)(ii) of this section.

(4) The number of children with disabilities who are assessed based on modified academic achievement standards described in paragraph (c) of this section.

(5) The performance results of children with disabilities on regular assessments and on alternate assessments if—

(i) The number of children participating in those assessments is sufficient to yield statistically reliable information; and

(ii) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

(f) *Universal design.* An SEA (or, in the case of a district-wide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this section.

(Authority: 20 U.S.C. 1412(a)(16))

[FR Doc. 05–24083 Filed 12–14–05; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 15, 2005

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Grain Inspection, Packers and Stockyards Administration

Graded commodities; review inspection requirements; published 11-15-05

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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*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 584/P.L. 109–125

Department of the Interior Volunteer Recruitment Act of 2005 (Dec. 7, 2005; 119 Stat. 2544)

H.R. 680/P.L. 109–126

To direct the Secretary of Interior to convey certain land held in trust for the Paiute Indian Tribe of Utah to the City of Richfield, Utah, and for other purposes. (Dec. 7, 2005; 119 Stat. 2546)

H.R. 1101/P.L. 109–127

To revoke a Public Land Order with respect to certain lands erroneously included in the Cibola National Wildlife Refuge, California. (Dec. 7, 2005; 119 Stat. 2548)

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