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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3565

RIN 0575–AC28

Guaranteed Rural Rental Housing Program; Secondary Mortgage Market Participation

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS) is amending its regulations for the Guaranteed Rural Rental Housing Program (GRRHP). Under the GRRHP, RHS guarantees loans for the development of housing and related facilities for low or moderate-income families in rural areas. RHS administers the GRRHP under the authority of the Housing Act of 1949. The GRRHP regulations are being amended to allow RHS, in the case of a default, to buy back guaranteed loans from investors, lower the minimum level of rehabilitation work when guaranteed loans are used for acquisition and rehabilitation, and clarify certain matters involving Ginnie Mae. These regulatory changes are made to increase participation by the secondary mortgage market in the GRRHP.

DATES: *Effective Date:* February 18, 2005.

FOR FURTHER INFORMATION CONTACT: Arlene Nunes, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, USDA, STOP 0781, 1400 Independence Avenue SW., Washington, DC 20250–0781, telephone: (202) 401–2307.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant for purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act

The information collection requirements contained in this regulation have been previously approved by OMB under the provisions of 44 U.S.C. chapter 35 and this regulation has been assigned OMB control number 0575–0174, in accordance with the Paperwork Reduction Act of 1995. There is a slight increase in the collection requirements from those previously approved by OMB. The Holder of the guarantee will be required to submit a demand letter to the lender and Agency requesting payment if the loan goes into default and the Holder wishes to be bought out. This change has been approved through OMB.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

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, RHS 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, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on 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. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Programs Affected

The affected program is listed in the Catalog of Federal Domestic Assistance under Number 10.438, Section 538 Rural Rental Housing Guaranteed Loans.

Intergovernmental Consultation

For the reasons contained in the Final Rule related Notice to 7 CFR part 3015, subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. RHS has conducted intergovernmental consultation in the manner delineated in 7 CFR part 3015, subpart V.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of RHS that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Public Comments

The Agency received the following comments as a result of the publication of the regulation as a Proposed Rule in the **Federal Register** on June 10, 2003, (68 FR 34552).

The Agency received thirteen responses on the regulation. The commentators represented the following:

- Mortgage Bankers and Users of the Program
- Attorneys
- Investment Firms
- Public Bodies
- Rating Agency
- Interest Groups

Recurring topics of discussion in the comments include increasing the interest accrual period, making payment on the guaranteed loan in a timely manner, addressing certainty of the guarantee, reducing servicing fees, increasing the percentage of the guarantee, clarifying the definition of ''Holder'' and the liquidation process, increasing the program size, changing the lender approval requirements, and integrating the Section 538 program with expiring Section 515 projects.

The comments that were adopted in the regulation are as follows:

1. Two commentators suggested that the Agency revise the term ''bar'' in § 3565.52 because of the connotation of the term in the industry. The term was eliminated in this section.

2. Two respondents recommended including a timeframe for the lender to respond to a repurchase demand from the Holder. In § 3565.405(a) of the final rule the lender has 10 business days from the date on a demand letter to respond to the Holder's request for repurchase. The Agency believes that the lender will have made this decision long before the Holder demands repurchase.

3. Two commentators considered the Agency's right to declare the guarantee unenforceable in the case where negligent servicing or origination is involved as arbitrary. To address the issue, the Agency provides a definition of ''negligent servicing or origination'' in § 3565.3 and describes the circumstances and procedural actions that the Agency must take before the guarantee is rendered unenforceable in § 3565.52(a).

4. One commentator suggested that the Agency substitute ''eligible construction expenses'' with ''eligible uses of loan proceeds'' in § 3565.52(c)(2) because ''eligible construction expenses'' are not defined. The Agency accepted the recommendation and made the change in that section.

5. One commentator recommended clarification of § 3565.52(c)(2) on what happens if the required levels of occupancy are not attained and/or conversion to a permanent loan does not occur. This section was expanded to explain that the guarantee will cover a permanent loan if even the required level of occupancy is not obtained if an additional operating reserve equal to 2% of the appraised value of the project or total development costs, whichever is greater, is set aside prior to closing of the construction loan. This cash contribution is an additional amount, over and above the required initial operating and maintenance reserve contribution.

6. One commentator questioned why in § 3565.405(b)(3) the Holder is responsible for resolving disputes regarding discrepancies between the amount claimed by the Holder and the information submitted by the lender. The Agency can only coordinate the resolution of the discrepancy. The Agency does not have independent knowledge of the amount due. Language was added in § 3565.405(b)(3) to clarify this.

7. Four comments were received about the date that interest starts to accrue once a loan is in default. The final rule in § 3565.452 defines the date interest starts to accrue as the date the Agency approves the lender's liquidation plan. If the Agency fails to respond to the lender's proposal or advise the lender to make revisions to the plan within 20 calendar days, the liquidation plan is approved by default.

8. One commentator recommended clarification on when a lender can file an estimated loss claim. Section 3565.453(d) was amended to require the lender to file an ''estimated loss claim'' with the liquidation plan if the lender expects the liquidation to exceed 90 calendar days.

9. Two commentators recommended eliminating moderate or substantial rehabilitation of 15 percent of the total estimated replacement cost of the project and setting the threshold to $6,500 per unit in § 3565.252. They argued that moderate or substantial rehabilitation of 15 percent of the total replacement cost of the project could be a value equal to or greater than the current level ($15,000 in the current rule), thus defeating the purpose of lowering the threshold to $6,500. The Agency agrees. The final rule in § 3565.252 has been changed accordingly.

10. The Agency has been advised that certain provisions needed to be added to the proposed rule so that section 538 loans could back securities that are guaranteed by the Government National Mortgage Association (Ginnie Mae). Ginnie Mae is a government corporation within the Department of Housing and Urban Development. Ginnie Mae's mortgage-backed securities program is governed by the National Housing Act, 12 U.S.C. 1716 *et seq.*; by its regulations, 24 CFR 300 *et seq.*; and by the Ginnie Mae Mortgage-Backed Securities Guide. To ensure compatibility between GRRHP and Ginnie Mae's mortgage-backed securities program, a Subpart K has been added to the final rule. This Subpart K addresses requirements for Agency guaranteed loans that back Ginnie Mae guaranteed securities. By adding Subpart K to the final rule, a securitization option will be available to lenders through Ginnie Mae.

The issues that the Agency did not adopt are as follows:

1. Three commentators identified the need to reduce the annual servicing fee in § 3565.53(b). The Agency has considered decreasing annual fees and concluded that the fees charged by the program are within industry standards.

2. Five respondents recommended a change in § 3565.52(a) to reflect a government guarantee of 100% instead of the 90% guarantee. A 100% guarantee is not permitted by the authorizing statute (42 U.S.C. 1490 p–2).

3. Three commentators argued against a limitation on interest accrual in § 3565.52(c)(1) and (2). The Agency understands the fundamental financial concept of interest accrual on borrowing. However, the term limit on interest accrual serves as an incentive for lenders to expedite the liquidation process.

4. Two commentators justified the need to increase program size, citing the prohibitive costs of making small loans as a disincentive to participation in the program. The Agency is unable to independently increase the size of the program since Congress appropriates funds to all federal programs.

5. Two commentators have suggested that the Agency use the section 538 program to meet the section 515 program's rehabilitation and preservation needs. The Agency is reviewing this possibility but has not yet been able to develop a model that would keep section 515 rents within the affordable income range that its tenants can afford.

6. Two commentators recommended changing requirements for program lender approval in § 3565.103(d)(1). They argue that lenders should not be required to obtain a rating from a lender rating agency if the lender has demonstrated financial capacity and stability. The Agency uses lender rating

agency information to ascertain the financial capacity and stability of the prospective lender. Government use of lender rating agencies is a cost-effective means of assessing financial capacity and stability.

7. Two commentators proposed the expansion of the definition of ''Holder'' in § 3565.3 so that a bond issuer or trustee may demand repurchase directly from the Agency upon loan default. The Agency would not be able to identify payments to individual Holders of the guarantee if payments were made to an intermediary unless the Holder of the guarantee designates another entity to receive payment on his/her behalf.

Background

GRRHP is a relatively new program that is administered by RHS. The GRRHP was operated as a pilot program in 1996 and 1997 and has been a permanent program since 1998. The program has been designed to increase the availability of affordable multifamily housing in rural America through partnerships between the Agency and lending sources, as well as with state and local housing finance agencies and bond issuers. During the early stages of the program, barriers were identified that have limited the success of the program. One of the primary barriers has been the inability of lenders to close loans due to the limited interest of the secondary mortgage market. As a result, the Agency held a stakeholders' meeting in December 2000 to identify problem areas. The purpose of the following changes is to make the program more attractive to the industry without jeopardizing the best interests of the Government.

Allow for a timely payment to investors. In other Rural Development guaranteed programs, the security Holder may demand that either the lender or the Government buy out the guaranteed portion of the loan from the Holder if payments are delinquent by at least 60 calendar days, or if the lender has failed to remit to the Holder its pro rata share of any payment made by the borrower within 30 calendar days of its receipt. While the Holder is effectively taken out prior to liquidation of the loan, the lender must continue to meet all of its obligations to the Government under the Lender's Agreement and Loan Note Guarantee. The inclusion of this provision in § 3565.405(a) and (b) is important to investors because they do not want to wait for the lender to liquidate the collateral to be reimbursed for their investment, enabling them to put their money to better use elsewhere. By this rule change, the Agency is also adding definitions to § 3565.3 for the terms ''Holder,'' ''Negligent servicing or origination,'' ''Ginnie Mae,'' ''Government National Mortgage Association,'' and amending definitions for the terms ''Interest credit'' and ''Permanent loan''.

Define conditions of the guarantee. A common concern found among lenders reviewing the GRRHP were the policies on termination or reduction of the guarantee due to a performance failure of the lender. It was the consensus that these policies needed to be more clearly delineated. In § 3565.52(a), the Agency identifies under what circumstances the Agency will exercise its right to terminate the guarantee. In addition, the Agency clarifies in § 3565.52(c)(1) the items that are included in the maximum guarantee for a permanent loan. The maximum guarantee covers 90 percent of the unpaid balance and accrued interest up to 90 days after loan default. Penalties incurred because of loan default are not covered by the guarantee. Moreover, it is important for the regulation to make clear that the investor will be held harmless unless they are complicit with the lender in cases involving fraud or misrepresentation of fact. This issue has been addressed in the revision of § 3565.52.

Allow the accrual of interest for 90 calendar days after loan default. When the lender is liquidating a guaranteed loan and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate. Currently, interest accrual terminates on the defaulted loan if an estimated payment of loss is made. This revision made in § 3565.452(a) allows interest to accrue for 90 calendar days after the date the Agency approves liquidating the loan. This interest accrual policy is consistent with other RD loan guarantee programs. Based on the weight of the factors used to calculate the program's subsidy rate, the impact of this interest accrual policy would be negligible.

In case of default, the Holder of a Loan Note Guarantee issued prior to the effective date of this final rule will stipulate, in a written demand for repurchase, its preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule. If the demand for repurchase does not stipulate a preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule, the Agency will process the demand for repurchase allowing accrual of interest for 90 calendar days after loan default as stated in this final rule.

The Holder must stipulate a preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule in the first demand for repurchase. The Holder of the Loan Note Guarantee issued prior to the effective date of this final rule cannot make a subsequent demand for repurchase changing the preference stipulated in the original demand for repurchase.

Lower per unit threshold for acquisition with rehabilitation from $15,000 per unit to $6,500 per unit. Lowering the per unit rehabilitation threshold in § 3565.252 affords new opportunities to preserve affordable housing in a rural community.

Eliminate the timeframe for liquidation, which is currently at 9 months. Eliminating the liquidation timeframe in § 3565.453(a)(9)(c) affords the lender the opportunity to sell the property for the highest and best price in accordance with market conditions.

Amend § 3565.212 by eliminating the word ''; and'' from paragraph (c) and adding a period in its place and by eliminating paragraph (d). This modification to § 3565.212 is necessary because paragraph (d) prohibits the Agency from guaranteeing a loan, which contains tax-exempt financing. Paragraph (d) of § 3565.212 contradicts § 3565.6, which allows tax-exempt financing to be used as a source of capital for the guaranteed loan.

Amend § 3565.103 by adding Ginnie Mae in paragraph (d)(1). This modification to § 3565.103 is necessary because lenders who are Ginnie Mae issuers must provide proof of their status as an issuer on a continuing basis when a lender becomes approved as a section 538 program lender.

Add Subpart K to final rule to explain the conditions under which Ginnie Mae will securitize Section 538 loans. To ensure compatibility between GRRHP and Ginnie Mae's mortgage-backed securities program a Subpart K has been added to the final rule. Subpart K addresses the requirements for Agency guaranteed loans that back Ginnie Mae guaranteed securities. By adding Subpart K to the final rule, a securitization option will be available to lenders through Ginnie Mae.

List of Subjects in 7 CFR Part 3565

Bankruptcy, Banks, Conflict of interests, Credit, Environmental impact statements, Fair housing, Government procurement, Guaranteed loans, Hearing and appeal procedures, Housing standards, Lobbying, Low and moderate income housing, Manufactured homes, Mortgages, Real property acquisition, Surety bonds.

■ Therefore, chapter XXXV, title 7, Code of Federal Regulations is amended to read as follows:

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

■ 1. The authority citation for part 3565 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—General Provisions

■ 2. Section 3565.3 is amended by adding, in alphabetical order, a definition of ''Ginnie Mae'', ''Government National Mortgage Association'', ''Holder'', and ''Negligent servicing or origination,'' and by revising the definitions for ''Interest credit'' and ''Permanent loan'' to read as follows:

§ 3565.3 Definitions.

* * * * *

Ginnie Mae. Ginnie Mae is a reference to the Government National Mortgage Association.

Government National Mortgage Association. The Government National Mortgage Association (Ginnie Mae) is a government corporation within the Department of Housing and Urban Development. Ginnie Mae guarantees privately issued securities backed by mortgages or loans which are insured or guaranteed by the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), or the Rural Housing Service (RHS) and certain other loans or mortgages guaranteed or insured by the Government.

* * * * *

Holder. A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part or all of the guaranteed note to an assignee, the assignee becomes a Holder only when the Agency receives notice and the transaction is completed through use of an assignment guarantee agreement form approved by the Agency.

* * * * *

Interest credit. A subsidy available to eligible borrowers that reduces the effective interest rate of the loan to the Applicable Long Term Monthly AFR.

* * * * *

Negligent servicing or origination. Negligent servicing or origination is a failure to perform those services which a reasonably prudent lender would perform in servicing or originating its own portfolio and includes not only the failure to act but also the failure to act in a timely manner.

* * * * *

Permanent loan. A permanent loan is defined as a mortgage loan usually covering development costs, interim loans, construction loans, financing expenses, marketing, administrative, legal, and other Agency approved costs. This loan differs from the construction loan in that financing goes into place after the project is completely constructed and open for occupancy. It is a long-term obligation, generally for a period of no less than 25 years and no more than 40 years.

* * * * *

Subpart B—Guarantee Requirements

■ 3. Section 3565.52 is revised to read as follows:

§ 3565.52 Conditions of guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will execute a Lender's Agreement. If a valid Lender's Agreement already exists, it is not necessary to execute a new Lender's Agreement with each loan guarantee.

(a) *Rights and liabilities.* A guarantee under this part is backed by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender had knowledge at the time the lender acquired the guarantee or assigned the loan, or in which a lender participates or condones. The guarantee will be unenforceable by the lender to the extent any loss is occasioned by a violation of usury laws, negligent servicing or origination by the lender, including a failure to acquire required security, or as a result of a use of loan funds for purposes other than those authorized by the Agency. The acts in the previous sentence constitute grounds for the refusal to make full payment under the guarantee to the lender, and will not be taken until the Agency gives the lender notice of the acts or omissions that it considers to constitute such grounds, specifying the applicable provisions of the Statute, Regulations, Loan Note Guarantee, or Lender's Agreement; the lender has not cured the acts or omissions within 90 calendar days after such notice; and the acts or omissions can reasonably be expected to have a material adverse effect on the credit quality of the guaranteed mortgage or the physical condition of the property securing the guaranteed mortgage. If such acts or omissions cannot be cured within a 90 calendar day period, the 90 calendar day cure period automatically shall be extended so long as curative activities are commenced during the 90 calendar day period. At no time shall the curative period extend more than 270 calendar days from the expiration of the original 90 calendar day cure period. When a guaranteed portion of a loan is sold to a Holder, the Holder shall succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and the Agency program regulations.

(b) *Liability of the Holder.* The Holder shall not be liable for the actions of the lender including, but not limited to, negligence, fraud, abuse, misrepresentation or misuse of funds, and its rights under the guarantee shall be fully enforceable notwithstanding the actions of the lender, unless the Holder has knowledge of fraud, misrepresentation or misuse of funds when it becomes the Holder or condones or participates in such actions.

(c) *Guarantee percentage and payment.* Both permanent loans and combination construction and permanent loans are eligible for a guaranty subject to the following limitations:

(1) *Permanent loans.* The Agency will issue a permanent loan guarantee after a minimum level of acceptable occupancy of 90% for 90 consecutive days is attained or an additional operating reserve equal to 2% of the appraised value of the project or total development costs, whichever is greater, is set aside. This cash contribution is an additional amount, over and above the required initial operating and maintenance reserve contribution. In either case, the permanent guarantee will be issued when the 2% additional reserve amount is set aside prior to closing the construction loan or the minimum level of occupancy is attained prior to the expiration of the Conditional Commitment, including any extensions thereto. The maximum guarantee payment for a permanent loan will be 90 percent of the unpaid principal and interest up to default and accrued interest 90 calendar days from the date the liquidation plan is approved by the Agency, as defined in § 3565.452. Penalties incurred as a result of default are not covered by the guarantee. The Agency may provide a lesser guarantee percentage based upon its evaluation of the credit quality of the loan. The Agency liability under any guarantee will decrease or increase, in proportion to any increase or decrease in the amount of the unpaid portion of

the loan, up to the maximum amount specified in the Loan Note Guarantee.

(2) *Combination construction and permanent loans.* For combination construction and permanent loans, the Agency will guarantee advances during the construction loan period, which cannot exceed 24 months. The guarantee of construction loan advances will cover a permanent loan once the minimum level of acceptable occupancy of 90% for 90 consecutive days is attained or an additional operating reserve equal to 2% of the appraised value of the project or total development costs, whichever is greater, is set aside prior to closing the construction loan. This cash contribution is an additional amount, over and above the required initial operating and maintenance reserve contribution. The maximum guarantee of construction advances related to a combination construction and permanent loan will not at any time exceed the lesser of 90 percent of the amount of principal and interest up to default advanced for eligible uses of loan proceeds or 90 percent of the original principal amount and interest up to default of the combination loan. Penalties incurred as a result of default are not covered by the guarantee. The Agency may provide a lesser guarantee percentage based upon its evaluation of the credit quality of the loan. Conversion to a permanent loan guarantee will become effective when the Agency provides the lender with written confirmation of the conversion date.

In addition, the lender shall require credit enhancements to protect the Government's guarantee. Acceptable credit enhancements include:

(i) Surety bonding or performance and payment bonding (the preferred credit enhancement);

(ii) An irrevocable letter of credit acceptable to the Agency; or

(iii) A pledge by the lender of acceptable collateral.

(3) *Maximum loss payment.* The maximum loss payment to a lender or Holder is as follows:

(i) To any Holder, 100 percent of any loss sustained by the Holder on the guaranteed portion of the loan and on interest due on such portion.

(ii) To the lender, the lesser of:

(A) Any loss sustained by the lender on the guaranteed portion, including principal, interest and accrued interest up to 90 days evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(B) The guaranteed principal advanced to or assumed by the borrower and any interest and accrued interest up to 90 days due thereon.

Subpart C—Lender Requirements

■ 4. Section 3565.102 is amended by revising paragraph (b) to read as follows:

§ 3565.102 Lender eligibility.

* * * * *

(b) Meet the qualifications and be approved by Fannie Mae, Freddie Mac or Ginnie Mae to make multifamily housing loans that are to be sold to or securitized by such corporations;

* * * * *

■ 5. Section 3565.103 is amended by revising paragraph (d)(1) to read as follows:

§ 3565.103 Approval requirements.

* * * * *

(d) * * *

(1) Overall financial strength, including capital, liquidity, and loan loss reserves, to have an acceptable level of financial soundness as determined by a lender rating service (such as Sheshunoff, Inc.); or to be an approved Fannie Mae, Freddie Mac, Ginnie Mae or HUD Federal Housing Administration multifamily lender; or, if a state housing finance agency, to have a top tier rating by a rating agency (such as Standard and Poor's Corporation);

* * * * *

Subpart E—Loan Requirements

§ 3565.212 [Amended]

■ 6. Section 3565.212 is amended by removing the word ''; and'' from paragraph (c) and adding a period in its place and by removing paragraph (d).

Subpart F—Property Requirements

■ 7. Section 3565.252 is revised to read as follows:

§ 3565.252 Housing types.

The property may include new construction or rehabilitation of existing structures. The units may be attached, detached, semi-detached, row houses, modular or manufactured houses, or multifamily structures. Manufactured housing must meet Agency requirements contained in 7 CFR part 1924, subpart A or a successor regulation. The Agency will guarantee proposals for new construction or acquisition with moderate or substantial rehabilitation of at least $6,500 per dwelling unit. The portion of guaranteed funds available for acquisition with rehabilitation may be limited in the annual Notice of Fund Availability.

Subpart I—Servicing Requirements

■ 8. Section 3565.403 is amended by redesignating paragraphs (a), (b), (c), and (d) as paragraphs (b), (c), (d), and (e), respectively, and by adding a new paragraph (a) to read as follows:

§ 3565.403 Special servicing.

* * * * *

(a) *Repurchase from Holder.* For securitized loans, the Holder may require the lender or Government to repurchase the security in accordance with the provisions of § 3565.405.

* * * * *

§ 3565.404 [Amended]

■ 9. Section 3565.404 is amended by revising the heading to read as follows:

§ 3565.404 Transfer of loans or mortgage servicing.

■ 10. Section 3565.405 is added to read as follows:

§ 3565.405 Repurchase of guaranteed loans.

(a) *Repurchase by lender.* The Holder may make written demand on the lender to repurchase the unpaid guaranteed portion of the loan when the borrower is in default not less than 60 calendar days on principal or interest due on the loan; or the lender has failed to remit to the Holder its pro rata share of any payment made by the borrower within 30 calendar days of receipt by the lender. The Holder must concurrently send a copy of the demand letter to the Agency. The lender will notify the Holder and the Agency of its decision to repurchase within 10 business days from the date of the written demand letter by the Holder. The lender may agree to repurchase the unpaid portion of the entire loan from the Holder, even though the guarantee does not cover any unguaranteed portion of the loan held by the Holder. If the lender decides to repurchase, the lender has 30 calendar days from the date of the Holder's written demand letter to do so. The guarantee does not cover any unguaranteed portion of the loan or the note interest to the Holder on the guaranteed loan accruing after 90 calendar days from the date of the Holder's demand letter to the lender requesting the repurchase. The lender may deduct the lender's servicing fee from the repurchase amount. The lender will accept an assignment without recourse from the Holder upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve problems, and to prevent default where and when reasonable.

(b) *Repurchase by Agency.* (1) If the lender does not repurchase the loan as provided in paragraph (a) of this section, the Agency will purchase from the Holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less the lender's servicing fee, within 30 calendar days after written demand to the Agency from the Holder. The guarantee will not cover the note interest to the Holder on the guaranteed loan accruing after 90 calendar days from the date of the original demand letter of the Holder to the lender requesting the repurchase.

Holders of Loan Note Guarantees that have been issued prior to the effective date of this final rule may opt to adhere to the terms and conditions of the Loan Note Guarantee then in effect. In case of loan default, the Holder of a Loan Note Guarantee issued prior to the effective date of this final rule will stipulate, in a written demand for repurchase, its preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule. If the demand for repurchase does not stipulate a preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule, the Agency will process the demand for repurchase as stated in this final rule. The Holder must stipulate a preference for repurchase in accordance with the Loan Note Guarantee issued prior to the effective date of this final rule in the first demand for repurchase. The Holder of the Loan Note Guarantee issued prior to the effective date of this final rule cannot make a subsequent demand for repurchase changing the preference stipulated in the original demand for repurchase.

(2) The Holder's demand to the Agency must include a copy of the written demand made to the lender. The Holder must also include evidence of its right to require payment from the Agency. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of an Agency approved assignment guarantee agreement, properly assigned to the Agency without recourse including all rights, title, and interest in the loan. The Holder must include in its demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. The Agency will be subrogated to all rights of the Holder.

(3) The Agency will notify the lender of its receipt of the Holder's demand for payment. The lender must provide the Agency with the information necessary for the Agency to determine the appropriate amount due the Holder within 10 business days from the date of the written demand letter to the lender from the Holder requesting repurchase of the guaranteed portion. The lender will furnish a current statement certified by an appropriate authorized officer of the lender stating the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any Holder. Any discrepancy between the amount claimed by the Holder and the information submitted by the lender must be resolved between the lender and the Holder before payment will be approved. The Agency will coordinate the resolution of the discrepancy. Such conflict will suspend the running of the 30 calendar day payment requirement.

(4) Purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of the Agency's rights against the lender. As Holder, the Agency will have the right to set-off any payments the Agency owes the lender.

Subpart J—Assignment, Conveyance, and Claims

■ 11. Section 3565.452 is amended by revising paragraph (a) to read as follows:

§ 3565.452 Decision to liquidate.

(a) A decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in § 3565.403 or it has been determined that it is in the best interest of the Agency and the lender to liquidate. For interest accrual purposes, interest will accrue for 90 calendar days after the date the liquidation plan is approved by the Agency. If within 20 calendar days of the Agency's receipt of the liquidation plan, the Agency fails to respond to the lender's proposal or advise the lender to make revisions to the plan that was submitted, the liquidation plan will be approved by default, and the 90 calendar day period for interest accrual will commence.

* * * * *

■ 12. Section 3565.453 is revised to read as follows:

§ 3565.453 Disposition of the property.

(a) Submission of the liquidation plan. The lender will, within 30 calendar days after a decision to liquidate, submit to the Agency in writing, its proposed detailed plan of liquidation. The Agency will inform the lender, in writing, whether the Agency concurs in the lender's liquidation plan. Should the Agency and the lender not agree on the liquidation plan, negotiations will take place between the Agency and the lender to resolve the disagreement. When the liquidation plan is approved by the Agency, the lender will proceed expeditiously with liquidation. The liquidation plan submitted to the Agency by the lender shall include:

(1) Satisfactory proof of the lender's ownership of the guaranteed loan promissory note and related security instruments.

(2) A copy of the payment ledger or equivalent which reflects the current loan balance and accrued interest to date and the method of computing the interest.

(3) A full and complete list of all collateral including any personal and corporate guarantees.

(4) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended actions for:

(i) Obtaining an appraisal of the collateral;

(ii) Acquiring and disposing of all collateral;

(iii) Collecting from guarantors;

(iv) Setting the proposed date of foreclosure; and

(v) Setting the proposed date of liquidation.

(5) Necessary steps for protection of the tenants and preservation of the collateral.

(6) Copies of the borrower's latest available financial statements.

(7) Copies of the guarantor's latest available financial statements.

(8) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense.

(9) A schedule to periodically report to the Agency on the progress of liquidation.

(10) Estimated protective advance amounts with justification.

(11) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined.

(12) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt.

(13) Any legal opinions supporting the decision to liquidate.

(14) The lender will obtain a complete appraisal report on all collateral securing the loan, which will reflect the fair market value and potential liquidation value, and an examination of the title on the collateral. In order to formulate a liquidation plan, which maximizes recovery, collateral must be

evaluated for hazardous substances, petroleum products, or other environmental hazards, which may adversely impact the market value of the collateral.

(b) A transfer and assumption of the borrower's operation can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted.

(c) A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest. The protective bid will not exceed the amount of the loan, including expenses of foreclosure, and should be based on the liquidation value considering estimated expenses for holding and reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of weatherization, and prior liens.

(d) Filing an estimated loss claim. When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender will file an estimated loss claim with the liquidation plan if the lender expects liquidation to exceed 90 calendar days. The estimated loss payment will be based on the outstanding loan amount minus the liquidation value of the collateral. For the purpose of reporting and loss claim computation, the loss claim will be promptly processed in accordance with applicable Agency regulations, as set forth in this section. The loss claim calculation will include 90 calendar days of interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency. If the lender estimates that there will be no loss after considering the costs of liquidation, the lender submits an estimated loss claim of zero. Interest accrual will cease 90 calendar days after the date the liquidation plan is approved by the Agency.

(e) Property disposition. Once the liquidation plan has Agency approval, the lender must make every effort to liquidate the property in a manner that will yield the highest market value consistent with the protections afforded to tenants in 7 CFR part 1944, subpart L or successor regulation.

(f) Accounting and reports. When the lender conducts liquidation, the lender will account for funds during the period of liquidation and provide the Agency with reports at least quarterly on the progress of liquidation, including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(g) Transmitting payments and proceeds to the Agency. When the Agency is the Holder of a portion of the guaranteed loan, the lender will transmit to the Agency its pro rata share of any payments received from the borrower, liquidation, or elsewhere.

■ 13. Section 3565.457 is revised to read as follows:

§ 3565.457 Determination of claim amount.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated, unless otherwise designated as a future recovery or after settlement and compromise of all parties has been completed.

(a) *Report of loss form.* An Agency approved form will be used for calculations of all estimated and final loss determinations. Estimated loss payments will only be paid by the Agency after it has approved a liquidation plan.

(b) *Estimated loss.* An estimated loss claim based on liquidation appraisal value will be prepared and submitted by the lender.

(1) The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment paid by the Agency will be applied by the lender on the loan debt. Such application does not release the borrower from liability.

(2) The Government's written authorization is required for all protective advances in excess of $5,000. Protective advances include, but are not limited to, advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance. A protective advance claim will be paid only at the time of the final report of loss payment except in certain transfer and assumption situations with Agency approval.

(c) *Final loss.* Within 30 calendar days after liquidation of all collateral, except for certain unsecured personal or corporate guarantees (as provided for in this section) is completed, a final report of loss on a form approved by the Agency must be prepared and submitted by the lender to the Agency. Before approval by the Agency of any final loss report, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender will make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the report of loss must support the amounts shown on the report of loss form.

(1) A determination must be made regarding the collectibility of unsecured personal and corporate guarantees. If reasonably possible, such guarantees should be promptly collected prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the report of loss will be filed when all other collateral has been liquidated, and unsecured personal or corporate guarantees will be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency.

(2) The lender must document that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly to the loan.

(3) The lender will show a breakdown of any protective advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made.

(4) The lender will show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made. Liquidation expenses are recoverable only from collateral proceeds.

(5) Accrued interest will be supported by documentation as to how the amount was accrued.

(6) Loss payments will be paid by the Agency within 60 calendar days after the receipt of the final loss report and accounting of the collateral.

(7) Should there be a circumstance where the lender cannot or will not sign a final report of loss, the State Director may complete the final report of loss and submit it to the Finance Office without the lender's signature. Before this action can be taken, all collateral must be disposed of or accounted for; there must be no evidence of fraud, misrepresentation, or negligent servicing by the lender; and all efforts to obtain the cooperation of the lender must have been exhausted and documented.

(d) *Maximum guarantee payment.* The maximum guarantee payment will not exceed the amount of guarantee

percentage as contained in the guarantee agreement (but in no event more than 90%) times the allowable loss amount.

(e) *Rent.* Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt after paying operating expenses of the property.

(f) *Liquidation costs.* Liquidation costs will be deducted from the proceeds of the disposition of primary collateral. If changed circumstances after submission of the liquidation plan require a substantial revision of liquidation costs, the lender will procure the Agency's written concurrence prior to proceeding with the proposed changes.

(g) *Payment.* When the Agency finds the final report of loss to be proper in all respects, it will approve the form and proceed as follows:

(1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.

(2) If the loss is less than the estimated loss payment, the lender will reimburse the Agency for the overpayment.

(3) If the Agency determines that it is in the Government's best interest to take assignment of the loan and conduct liquidation, as stipulated in 42 U.S.C. 1490(i)(3), Assignment by Secretary, the Agency will pay the lender in accordance with the Loan Note Guarantee.

(h) *Date of loss.* The date of loss is the date on which the collateral will be liquidated in the liquidation plan, unless an alternative date is approved by the Agency. Where the Agency chooses to accept an assignment of the loan or conveyance of title, the date of loss will be the date on which the Agency accepts assignment of the loan or conveyance of title.

(i) *Allowable claim amount.* The allowable claim amount must be calculated by:

(1) Adding to the unpaid principal and interest on the date of loss, an amount approved by the Agency for payments made by the lender for amounts due and owning on the property, including:

(i) Property taxes and other protective advances as approved by the Agency;

(ii) Water and sewer charges and other special assessments that are liens prior to the guaranteed loan;

(iii) Insurance of the property; and

(iv) Reasonable liquidation expenses.

(2) And by deducting the following items:

(i) Any amount received by the lender on the account of the guaranteed loan after the date of default;

(ii) Any net income received by the lender from the secured property after the date of default; and

(iii) Any cash items retained by the lender, except any amount representing a balance of the guaranteed loan not advanced to the borrower. Any loan amount not advanced will be applied by the lender to reduce the outstanding principal on the loan.

(j) *Lender certification.* The lender must certify that all possibilities of collection have been exhausted and that all of the items specified in paragraph (c) of this section have been identified and reported to the Agency as a condition for payment of claim.

■ 14. A new subpart K, consisting of §§ 3565.501 through 3565.550 is added to read as follows:

Subpart K—Agency Guaranteed Loans That Back Ginnie Mae Guaranteed Securities

Sec.

3565.501 Applicability.
3565.502 Incontestability.
3565.503 Repurchase.
3565.504 Transfers.
3565.505 Liability.
3565.506–3565.549 [Reserved]
3565.550 OMB control number.

§ 3565.501 Applicability.

The provisions of this subpart apply when Agency guaranteed loans are used to back Ginnie Mae securities. In instances where this subpart applies, the provisions of this subpart prevail over any other provisions of this part.

§ 3565.502 Incontestability.

In the case of loans that back Ginnie Mae securities or loans that are acquired by Ginnie Mae as a consequence of its guaranty, the Agency guarantee under this part is incontestable except that the guarantee may not be enforced by a lender who commits fraud or misrepresentation or by a lender who had knowledge of the fraud or misrepresentation at the time such a lender acquired the guarantee or was assigned the loan.

§ 3565.503 Repurchase.

Lenders and security Holders must comply with Ginnie Mae requirements regarding the repurchase of loans from pools backing Ginnie Mae guaranteed securities.

§ 3565.504 Transfers.

(a) Loans and/or mortgage servicing on loans backing Ginnie Mae guaranteed securities may only be transferred to a Ginnie Mae issuer and may only be transferred with prior Ginnie Mae approval.

(b) Agency approval shall not be required for transfer of the servicing on the guaranteed mortgages to Ginnie Mae.

§ 3565.505 Liability.

(a) Ginnie Mae shall not be liable for the actions of the lender including, but not limited to, negligence, fraud, abuse, misrepresentation or misuse of funds, property condition, or violations of usury laws.

(b) Ginnie Mae's rights under the guarantee shall be fully enforceable notwithstanding the actions of the lender.

§§ 3565.506–3565.549 [Reserved]

§ 3565.550 OMB control number.

According to the Paperwork Reduction Act of 1995, no party is required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0174.

Dated: January 11, 2005.

Gilbert Gonzales,

Acting Under Secretary, Rural Development.

[FR Doc. 05–1034 Filed 1–18–05; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19078; Directorate Identifier 98–CE–17–AD; Amendment 39–13946; AD 98–20–38 R1]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company (Raytheon) Beech 200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) to revise AD 98–20–38, which applies to all Beech 200 series airplanes. AD 98–20–38 requires you to revise the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for and procedures for exiting from severe icing conditions. Part of the applicability of AD 98–20–38 includes the Raytheon

Models B200 and B200C airplanes. AD 96–09–13 already requires AFM revisions on this subject for these airplane models. Consequently, FAA is revising AD 98–20–38 to remove the Models B200 and B200C from the applicability and add clarification that AD 96–09–13 affects these airplanes. We are issuing this AD to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations.

DATES: This AD becomes effective on February 18, 2005.

ADDRESSES: To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–19078; Directorate Identifier 98–CE–17–AD.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Pellicano, Aerospace Engineer (Icing Specialist), Atlanta Aircraft Certification Office, FAA, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6064; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA taken any action to this point? A review of the requirements for certification of Raytheon Beech 200 series airplanes in icing conditions caused FAA to issue AD 98–20–38, Amendment 39–10806 (63 FR 51805, September 29, 1998). AD 98–20–38 requires you to revise the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for and procedures for exiting from severe icing conditions.

What has happened since AD 98–20–38 to initiate this proposed action? Part of the applicability of AD 98–20–38 includes the Raytheon Models B200 and B200C airplanes. AD 96–09–13 already requires AFM revisions on this subject for these airplane models. The language is similar but is not the same and AD 96–09–13 reflects the preferred information. Consequently, FAA is revising AD 98–20–38 to remove the Models B200 and B200C from the applicability and add clarification that AD 96–09–13 affects these airplanes.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Raytheon Beech 200 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 22, 2004 (69 FR 62005). The NPRM proposed to revise AD 98–20–38 to remove the Beech Models B200 and B200C from the applicability. The Beech Models B200 and B200C are still affected by the actions of AD 96–09–13.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 1,600 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? The cost estimate of this AD is the same per airplane as AD 98–20–38. However, the AD would affect fewer airplanes than AD 98–20–38.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19078; Directorate Identifier 98–CE–17–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–20–38, Amendment 39–10806 (63 FR 51805, September 29, 1998), and by adding a new AD to read as follows:

98–20–38 R1 Raytheon Aircraft Company: Amendment 39–13946; Docket No. FAA–2004–19078; Directorate Identifier 98–CE–17–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on February 18, 2005.

What Other ADs Are Affected by This Action?

(b) This AD revises AD 98–20–38, Amendment 39–10806.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models, all serial numbers, that are certificated in any category:

(1) Beech 200 (A100–1 (U–21J)).
(2) Beech 200C.
(3) Beech 200CT.
(4) Beech 200T.
(5) Beech A200 (C–12A) or (C–12C).
(6) Beech A200C (UC–12B).
(7) Beech A200CT (C–12D), (FWC–12D), (RC–12D), (C–12F), (RC–12G), (RC–12H), (RC–12K), or (RC–12P).
(8) B200CT.
(9) B200T.

Note 1: The actions of AD 96–09–13 are required for the Beech Models B200 and B200C airplanes.

What Is the Unsafe Condition Presented in This AD?

(d) The actions specified in this AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing condition by providing more clearly defined procedures and limitations.

What Must I Do To Address This Problem?

(e) Within 30 days after November 4, 1998 (the effective date of AD 98–20–38), do the requirements of paragraphs (e)(1) and (e)(2) of this AD, unless already accomplished.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"Warning

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.
—Accumulation of ice on the upper surface of the wing, aft of the protected area.
—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [Note: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"The Following Weather Conditions May Be Conducive to Severe In-Flight Icing

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

Procedures for Exiting the Severe Icing Environment

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(f) As an alternative method of compliance to the actions required by paragraph (e)(2) of this AD, revise the Abnormal Procedures Section or Emergency Procedures Section of the AFM instead of the Normal Procedures section of the AFM. Insert the information presented in paragraph (e)(2) of this AD into the applicable AFM section.

(g) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may incorporate the AFM revisions required by this AD. Enter this information into the aircraft records showing compliance with this AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

May I Request an Alternative Method of Compliance?

(h) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Mr. Paul Pellicano, Aerospace Engineer (Icing Specialist), Atlanta Aircraft Certification Office, FAA, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6064; facsimile: (770) 703–6097.

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

(i) You may view the AD docket at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.*

Issued in Kansas City, Missouri, on January 11, 2005.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–895 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18743; Directorate Identifier 2004–CE–23–AD; Amendment 39–13944; AD 2005–01–19]

RIN 2120–AA64

Airworthiness Directives; GARMIN International Inc. GTX 33, GTX 33D, GTX 330, and GTX 330D Mode S Transponders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) to supersede Airworthiness Directive 2004–10–15, which applies to certain GTX 330 and GTX 330D Mode S transponders that are installed on airplanes. AD 2004–10–15 currently requires you to install GTX 330/330D Software Upgrade Version 3.03, 3.04, or 3.05. This AD applies to certain GTX 33, GTX 33D, GTX 330, and GTX 330D Mode S transponders that are installed on airplanes and is the result of observations that the GTX 33/33D/330/330D may detect, from other airplanes, the S1 (suppression) interrogating pulse below the minimum trigger level (MTL) and, in some circumstances, not reply. The GTX 33/33D/330/330D should still reply even if it detects S1 interrogating pulses below the MTL. Consequently, this AD would require you to install a GTX 33/33D/330/330D Software Upgrade to at least Version 3.06. No additional action is necessary for those airplanes that have transponders Software Upgrade 3.03 installed. Software Upgrade Versions 3.03 and 3.06 correct a TAS, TCAD, and TCAS I system ''whisper-shout'' problem that could potentially lead to the aircraft not being visible at certain ranges. TCAS II systems are not affected. We are issuing this AD to prevent interrogating aircraft from possibly receiving inaccurate replies due to suppression from aircraft equipped with the GTX 33/33D/330/330D Mode S transponders when the pulses are below the MTL. The inaccurate replies could result in reduced vertical separation.

DATES: This AD becomes effective on February 23, 2005.

As of February 23, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact GARMIN International Inc., 1200 East 151st Street, Olathe, KS 66062; telephone: 913–397–8200. To review this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–18743.

FOR FURTHER INFORMATION CONTACT: Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4134; facsimile: 316–946–4107; e-mail address: *roger.souter@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The GTX 330/GTX 330D may detect from other aircraft the S1 (suppression) interrogating pulse below the MTL and, in some circumstances, does not reply. The GTX 330/330D should still reply even if it detects S1 interrogating pulses below the MTL, and this caused FAA to issue AD 2004–10–15, Amendment 39–13645 (69 FR 29212, dated May 21, 2004). AD 2004–10–15 currently requires the incorporation of GTX 330/330D Software Upgrade to at least Version, 3.03, 3.04, or 3.05 on certain GTX 330 and GTX 330D Mode S transponders that are installed on airplanes.

What has happened since AD 2004–10–15 to initiate this action? After the issuance of AD 2004–10–15, GARMIN International Inc. discovered that minor changes made to GTX 330/330D Software Upgrades 3.04 and 3.05 inadvertently removed the correction to not suppress the S1 pulse below MTL. Garmin also discovered the Software Upgrade must be installed on GTX 33 and GTX 33D Mode S transponders as well as the GTX 330 and GTX 330D Mode S transponders.

What is the potential impact if FAA took no action? If these changes are not incorporated, then interrogating aircraft could possibly receive inaccurate replies due to suppression from aircraft equipped with the GTX 33/33D/330/330D Mode S transponders when the pulses are below the MTL. Software Upgrade Version 3.03 and 3.06 correct a TAS, TCAD, and TCAS I system ''whisper-shout'' problem that could potentially lead to the aircraft not being visible at certain ranges. TCAS II systems are not affected. The inaccurate replies could result in reduced vertical separation.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain GTX 330 and GTX 330D Mode S transponders that are installed on airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 7, 2004 (69 FR 60100). The NPRM proposed to require you to install GTX 33/33D/330/330D Software Upgrade Version 3.03 or 3.06.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue: Direct the AD Only to Those Products That Have the Old SW Versions 3.00, 3.01, 3.02, 3.04, and 3.05

What is the commenter's concern? The NPRM currently requires installation of GTX 330/330D Software Upgrade Version 3.03 or 3.06 to comply with the proposed AD, or later Software Versions by way of an AMOC. The commenter would like to direct the AD only to those products that have the old software versions 3.00, 3.01, 3.02, 3.04, and 3.05 installed; so that if the new software version 3.06 or later is installed the AD does not affect that product. The AD should not apply to future software versions.

What is FAA's response to the concern? We concur. This was the intent of the NPRM, and we have reworded the AD to reflect this comment.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Docket Information

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

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 5,400 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? Garmin International Inc. will provide warranty only for Service Bulletin No. 0409, dated July 19, 2004 (which incorporates Software Upgrade 3.06) installation as specified in the service information. Although Software Upgrade 3.03 is still in compliance with this proposed AD, if previously installed, Software Upgrade 3.03 is no longer available through Garmin.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–18743; Directorate Identifier 2004–CE–23–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing AD 2004–10–15, Amendment 39–13645 and adding a new AD to read as follows:

2005–01–19 GARMIN International Inc.: Amendment 39–13944; Docket No. FAA–2004–18743; Directorate Identifier 2004–CE–23–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on February 23, 2005.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 2004–10–15, Amendment 39–13645.

What Airplanes Are Affected by This AD?

(c) This AD affects GARMIN International Inc. GTX 33, GTX 33D, GTX 330, and GTX 330D Mode S transponders that include software versions 3.00, 3.01, 3.02, 3.04, or 3.05 that are installed on, but not limited to, the following airplanes, certificated in any category:

Manufacturer	Model
(1) Aermacchi S.p.A	S.205–18/F, S.205–18/R, S.205–20/R, S.205–22/R, S208, S.208A, F.260, F.260B, F.260C, F.260D, F.260E, F.260F, S.211A.
(2) Aeronautica Macchi S.p.A	AL 60, AL 60–B, AL 60–F5, AL 60–C5, AM–3.
(3) Aerostar Aircraft Corporation	PA–60–600 (Aerostar 600), PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), PA–60–700P (Aerostar 700P), 360, 400.
(4) Alexandria Aircraft, LLC	14–19, 14–19–2, 14–19–3, 14–19–3A, 17–30, 17–31, 17–31TC, 17–30A, 17–31A, 17–31ATC
(5) Alliance Aircraft Group LLC	15A, 20, H–250, H–295 (USAFU–10D), HT–295, H391 (USAFYL–24), H391B, H–395 (USAFL–28A or U–10B), H–395A, H–700, H–800, HST–550, HST–550A (USAF AU–24A), 500.
(6) American Champion Aircraft Corp	402, 7GCA, 7GCB, 7KC, 7GCBA, 7GCAA, 7GCBC, 7KCAB, 8KCAB, 8GCBC.
(7) Sky International Inc	A–1, A–1A, A–1B, S–1S, S–1T, S–2, S–2A, S–2S, S–2C.
(8) B–N Group Ltd	BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–8, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, BN–2T–4R, BN–2A MK.III, BN2A MK. III–2, BN2A MK. 111–3.
(9) Bellanca	14–13, 14–13–2, 14–13–3, 14–13–3W.

Manufacturer	Model
(10) Bombardier Inc	(Otter) DHC–3, DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300.
(11) Cessna Aircraft Company	170, 170A, 170B, 172, 172A, 172B, 172C, 172D, 172E, 172F (USAF T–41A), 172G, 172H (USAF T041A), 172I, 172K, 172L, 172M, 172N, 172P, 172Q, 172R, 172S, 172RG, P172D, R172E (USAF T–41 B) (USAF T–41 C AND D), R172F (USAF T–41 D), R175G, R172H (USAF T–41 D), R172J, R172K, 175, 175A, 175B, 175C, 177, 177A, 177B, 177RG, 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 180K, 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, 182S, 182T, R182, T182, TR182, T182T, 185, 185A, 185B, 185C, 185D, 185E, A185E, A185F, 190, (LC–126A, B, C) 195, 195A, 195B, 210, 210A, 210B, 210C, 210D, 210E, 210F, T210F, 210G, T210G, 210H, T210H, 210J, T210J, 210K, T210K, 210L, T210L, 210M, T210M, 210N, P210N, T210N, 210R, P210R, T210R, 210–5 (205), 210–5A (205A), 206, P206, P206A, P206B, P206C, P206D, P206E, TP206A, TP206B, TP206C, TU206D, TU206E, TU206F, TU206G, 206H, T206H, 207, 207A, T207, T207A, 208, 208A, 208B, 310, 310A (USAF U–3A), 310B, 310C, 310D, 310E (USAF U–3B), 310F, 310G, 310H, E310H, 310I, 310J, 310J–1, E310J, 310K, 310L, 310N, 310P, T310P, 310Q, T310Q, 310R, T310R, 320, 320A, 320B, 320C, 320D, 320E, 320F, 320–1, 335, 340, 340A, 336, 337, 337A (USAF 02B), 337B, T337B, 337C, 337E, T337E, T337C, 337D, T337D, M337B (USAF 02A), 337F, T337F, T337G, 337G, 337H, P337H, T337H, T337H–SP, 401, 401A, 401B, 402, 402A, 402B, 402C, 411, 411A, 414, 414A, 421, 421A, 421B, 421C, 425, 404, 406, 441.
(12) Cirrus Design Corporation	SR20, SR22.
(13) Commander Aircraft Company	112, 112TC, 112B, 112TCA, 114, 114A, 114B, 114TC.
(14) de Havilland Inc	DHC–2 Mk. I, DHC–2 Mk. II, DHC–2 Mk. III.
(15) Dynac Aerospace Corporation	(Volaire) 10, (Volaire) 10A, (Aero Commander) 100, (Aero Commander) 100A, (Aero Commander) 100–180.
(16) Diamond Aircraft Industries	DA 20–A1, DA20–C1, DA 40.
(17) Empressa Brasileira de Aeronautica S.A. EMBRAER.	EMB–110P1, EMB–110P2.
(18) Extra Flugzeugbau Gmbh	EA300, EA300L, EA300S, EA300/200, EA–400.
(19) Fairchild Aircraft Corporation	SA26–T, SA26–AT, SA226–T, SA226–AT, SA226–T(B), SA227–AT, SA227–TT, SA226–TC, SA227–AC (C–26A), SA227–CC, SA227–DC (C–26B).
(20) Global Amphibians, LLC	Colonial C–1, Colonial C–2, Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, Lake Model 250.
(21) Grob-Werke	G115, G115A, G115B, G115C, G115C2, G115D, G115D2, G115EG, G120A.
(22) Lancair Company	LC40–550FG.
(23) LanShe Aerospace, LLC	MAC–125C, MAC–145, MAC–145A, MAC–145B.
(24) Learjet Inc.	23.
(25) Lockheed Aircraft Corporation	18.
(26) Luscombe Aircraft Corporation	11A, 11E.
(27) Maule Aerospace Technology, Inc	Bee Dee M–4, M–4, M–4C, M–4S, M–4T, M–4180C, M–4–180S, M–4–180T, M–4–210, M–4–210C, M–4–210S, M–4–210T, M–4–220, M–4–220S, M–4–220T, M–5–180C, M–5–200, M–5–210C, M–5–210TC, M–5–220C, M–5–235C, M–6–180, M–6–235, M–7–235, MX–7–235, MX–7–180, MX–7–420, MXT–7–180, MT–7–235, M–8–235, MX–7–160, MXT–7–160, MX–7–180A, MXT–7–180A, MX–7–180B, M–7–235B, M–7–235A, M–7–235C, MX–7–180C, M–7–260, MT–7–260, M–7–260C, M–7–420AC, MX–7–160C, MX–7–180AC, M–7–420A, MT–7–420.
(28) Mitsubishi Heavy Industries, Ltd	MU–2B–25, MU–2B–35, MU–2B–26, MU–2B–36, MU–2B–26A, MU–2B–36A, MU–2B–40, MU–2B–60, MU–2B, MU–2B–20, MU–2B–15.
(29) Mooney Airplane Company, Inc	M20, M20A, M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, M20R, M20S, M22.
(30) Moravan a.s	Z–242L, Z–143L.
(31) Navion Aircraft Company, Ltd	NAVION, Navion (L–17A), Navion (L17B), Navion (L–17C), Navion B, Navion D, Navion E, Navion F, Navion G, Navion H.
(32) New Piper Aircraft, Inc	PA–12, PA–12S, PA–18, PA–18S, PA–18 "105" (Special), PA–18S "105" (Special), PA–18A, PA–18 "125" (Army L–21A), PA–18S "125," PA–18AS "125," PA–18 "135" (Army L–21B), PA–18A "135," PA–18S "135," PA–18 "150," PA–18A "150," PA–18S "150," PA–18AS "150," PA–19 (Army L–18B), PA–19S, PA–20, PA–20S, PA–20 "115," PA–20S "115," PA–20 "135," PA–20S "135," PA–22, PA–22–108, PA–22–135, PA–22S–135, PA–22–150, PA–22S–150, PA–22–160, PA–22S–160, PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–24, PA–24–250, PA–24–260, PA–24–400, PA–28–140, PA–28–150, PA–28–151, PA–28–160, PA–28–161, PA–28–180, PA–28–235, PA–28S–160, PA–28R–180, PA–28S–180, PA–28–181, PA–28R–200, PA–28R–201, PA–28R–201T, PA–28RT–201, PA–28RT–201T, PA–28–201T, PA–28–236, PA–30, PA–39, PA–40, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–31P–350, PA–32–260, PA–32–300, PA–32S–300, PA–32R–300, PA–32RT–300, PA–32RT–300T, PA–32R–301 (SP), PA–32R–301 (HP), PA–32R–301T, PA–32–301, PA–32–301T, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000, PA–42–720R, PA–44–180, PA–44–180T, PA–46–310P, PA–46–350P, PA–46–500TP.
(33) Ostmecklenburgische Flugzeugbau GmgH	OMF–100–160.
(34) Piaggio Aero Industries S.p.A	P–180.
(35) Pilatus Aircraft Ltd	PILATUS PC–12, PILATUS PC–12/45, PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PA–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, PC–6/C1–H2, PC–7.
(36) Prop-Jets, Inc	200, 200A, 200B, 200C, 200D, 400.

Manufacturer	Model
(37) Panstwowe Zakladv Lotnicze (PZL)	PZL–104 WILGA 80, PZL–104M WILGA 2000, PZL–WARSZAWA, PZL–KOLIBER 150A, PZL–KOLIBER 160A.
(38) PZL WSK/Mielec Obrsk	PZL M20 03, PZL M26 01.
(39) Raytheon	35–33, 35–A33, 35–B33, 35–C33, 35–C33A, E33, E33A, E33C, F33, F33A, F33C, G33, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, 36, A36, A36TC, B36TC, 35, A35, B35, C35, D35, E35, F35, G35, 35R, F90, 76, 200, 200C, 200CT, 200T, A200, B200, B200C, B200CT, B200T, 300, 300LW, B300, B300C, 1900, 1900C, 1900D, A100–1 (U–21J), A200 (C–12A), A200 (C–12C), A200C (UC–12B), A200CT (C–12D), A200CT (FWC–12D), A200CT (RC–12D), A200CT (C–12F), A200CT (RC–12G), A200CT (RC–12H), A200CT (RC–12K), A200CT (RC–12P), A200CT (RC–12Q), B200C (C–12F), B200C (UC–12F), B200C (UC–12M), B200C (C–12R), 1900C (C–12J), 65, A65, A65–8200, 65–80, 65–A80, 65–A80–8800, 65–B80, 65–88, 65–A90, 70, B90, C90, C90A, E90, H90, 65–A90–1, 65–A90–2, 65–A90–3, 65–A90–4, 95, B95, B95A, D95A, E95, 95–55, 95–A55, 95–B55, 95–B55A, 95–B55B (T–42A), 95–C55, 95–C55A, D55, D55A, E55, E55A, 56TC, A56TC, 58, 58A, 58P, 58PA, 58TC, 58TCA, 99, 99A, 99A (FACH), A99, A99A, B99, C99, 100, A100 (U–21F), A100A, A100C, B100, 2000, 3000, 390, 19A, B19, M19A, 23, A23, A23A, A23–19, A23–24, B23, C23, A24, A24R, B24R, C24R, 60, A60, B60, 18D, A18A, A18D, S18D, SA18A, SA18D, 3N, 3NM, 3TM, JRB–6, D18C, D18S, E18S, RC–45J (SNB–5P), E18S–9700, G18S, H18, C–45G, TC–45G, C–45H, TC–45H, TC–45J, UC–45J (SNB–5), 50 (L–23A), B50 (L–23B), C50, D50 (L–23E), D50A, D50B, D50C, D50E–5990, E50 (L–23D, RL–23D), F50, G50, H50, J50, 45 (YT–34), A45 (T–34A or B–45), D45 (T–34B).
(40) Rockwell International Corporation	BC–1A, AT–6 (SNJ–2), AT–6A (SNJ–3), AT–6B, AT–6C (SNJ–4), AT–6D (SNJ–5), AT–6F (SNF–6), SNJ–7, T–6G, NOMAD NA–260.
(41) Short Brothers & Harland Ltd	SC–7 Series 2, SC–7 Series 3.
(42) Slingsby Aviation Ltd	T67M260, T67M260–T3A.
(43) SOCATA—Group Aerospatiale	TB9, TB10, TB20, TB21, TB200, TBM 700, M.S. 760, M.S. 760 A, M.S. 760 B, Rallye 100S, Rallye 150ST, Rallye 150T, Rallye 235E, Rallye 235C, MS 880B, MS 885, MS 894A, MS 893A, MS 892A–150, MS 892E–150, MS 893E, MS 894E, GA–7.
(44) Tiger Aircraft LLC	AA–1, AA–1A, AA–1B, AA–1C, AA–5, AA–5A, AA–5B, AG–5B.
(45) Twin Commander Aircraft Corporation	500, 500–A, 500–B, 500–U, 500–S, 520, 560, 560–A, 560–E, 560F, 680, 680E, 680F, 680FL, 680FL(P), 680T, 680V, 680W, 681, 685, 690, 690A, 690B, 690C, 690D, 695, 695A, 695B, 720, 700.
(46) Univair Aircraft Corporation	108, 108–1, 108–2, 108–3, 108–5.
(47) Vulcanair S.p.A	P68, P68B, P68C, P68C–TC, P68 "Observer," P68 "Observer 2," P68TC "Observer," AP68TP300 "Spartacus," AP68TP 600 "Viator".
(48) Zenair Ltd.	CH2000.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of observations that the GTX 33/33D/330/330D may detect, from other airplanes, the S1 (suppression) interrogating pulse below the minimum trigger level (MTL) and, in some circumstances, not reply. The GTX 33/33D/330/330D should still reply even if it detects S1 interrogating pulses below the MTL. The actions specified in this AD are intended to prevent interrogating aircraft from possibly receiving inaccurate replies, due to suppression, from aircraft equipped with the GTX 33/33D/330/330D Mode S transponders when the pulses are below the minimum trigger level (MTL). Software Upgrade Versions 3.03 and 3.06 correct a TAS, TCAD, and TCAS I system "whisper-shout" problem that could potentially lead to the aircraft not being visible at certain ranges. TCAS II systems are not affected. The inaccurate replies could result in reduced vertical separation.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
Install GTX 33/33D/330/330D Software Upgrade for transponders with software version 3.00, 3.01, 3.02, 3.04, 3.05 to at least version 3.06. If version 3.03 is already installed, no further action is required. This version is no longer available from Garmin. This AD does not apply to software versions past 3.05.	Install the software upgrade within 180 days after February 23, 2005 (the effective date of this AD), unless already accomplished.	Follow GARMIN Mandatory Software Service Bulletin No.: 0304, Rev B, dated June 12, 2003 accomplished. (Software Upgrade 3.03) or GARMIN Mandatory Software Service Bulletin No.: 0409, dated July 19, 2004 (Software Upgrade 3.06).

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4134; facsimile: 316–946–4107; email address: *roger.souter@faa.gov.*

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in GARMIN Mandatory Software Service Bulletin No.: 0304, Rev B, dated June 12, 2003 (Software Upgrade 3.03) or GARMIN Mandatory Software Service Bulletin No.: 0409, dated July 19, 2004 (Software Upgrade 3.06). The Director of the Federal Register approved the incorporation by reference of

this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact GARMIN International Inc. 1200 East 151st Street, Olathe, KS 66062; telephone: 913–397–8200. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–18743.

Issued in Kansas City, Missouri, on January 7, 2005.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–832 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–CE–01–AD; Amendment 39–13943; AD 2005–01–18]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech 100, 200, and 300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) to supersede AD 93–25–07, which applies to Raytheon Aircraft Company (Raytheon) Beech 100, 200, and 300 series airplanes. AD 93–25–07 currently requires you to repetitively inspect the fuselage stringers for cracks and modify at certain times depending on the number of cracked stringers. This AD is the result of FAA's policy (since 1996) to not allow airplane operation when known cracks exist in primary structure. The fuselage structure is considered primary structure and operation is currently allowed for a certain period of time if less than five fuselage stringers are cracked. Consequently, this AD retains the inspection and modification requirements of AD 93–25–07, but requires you to repair any cracked fuselage stringers. We are issuing this AD to detect and correct any cracked fuselage stringers in the rear pressure bulkhead area, which could result in structural damage to the fuselage. This damage could lead to failure of the fuselage with potential loss of control of the airplane.

DATES: This AD becomes effective on March 1, 2005.

As of March 1, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–01–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? Reports of cracks on the fuselage stringers in the rear pressure bulkhead area on Raytheon Beech 100, 200, and 300 series airplanes caused us to issue AD 93–25–07, Amendment 39–8773. AD 93–25–07 currently requires the following on Raytheon Beech Models 200, A200, B200, A100–1, 200C, A200C, B200C, 200CT, A200CT, B200CT, 200T, B200T, 300, B300, and B300C airplanes:

—Repetitive inspections of the fuselage stringers for cracks; and

—Modification at certain times depending on the number of cracked stringers.

What has happened since AD 93–25–07 to initiate this action? As currently written, AD 93–25–07 allows continued flight if cracks are found in less than five fuselage stringers in the area of the rear pressure bulkhead. In 1996, FAA developed policy to not allow airplane operation when known cracks exist in primary structure, unless the ability to sustain limit and ultimate load with these cracks is proven. The fuselage stringers in the area of the rear pressure bulkhead are considered primary structure.

This AD brings the actions of AD 93–25–07 in compliance with FAA policy. Therefore, FAA has determined:

—That airplane operation on the affected airplanes should not be allowed for more than 25 hours time-in-service (TIS) if less than five fuselage stringers (Stringer Nos. 5 through 11) in the rear pressure bulkhead are cracked; and

—That no operation should be allowed until modification for any airplane with five or more cracked fuselage stringers (Stringer Nos. 5 through 11) in the rear pressure bulkhead.

The FAA has also identified other airplanes that should be affected by this action.

What is the potential impact if FAA took no action? Cracked fuselage stringers in the rear pressure bulkhead area, if not detected and corrected, could result in structural damage to the fuselage. This damage could lead to failure of the fuselage with potential loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Beech 100, 200, and 300 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 14, 2004 (69 FR 55369). The NPRM proposed to supersede AD 93–25–07 with a new AD that would retain the requirement of repetitively inspecting the fuselage stringers for cracks, but would require the repair of any cracked fuselage stringers. We also proposed a grace period of 25 cycles for all airplanes with less than five cracked fuselage stringers. The repetitive inspections would no longer be required when all fuselage stringers (Nos. 5 though 11) in the rear pressure bulkhead are modified.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 2,300 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish each inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $65 per hour = $130	No special parts necessary to do the inspection.	$130	$130 × 2,300 = $299,000

We estimate the following costs to incorporate the fuselage stringer repair kit that will be required based on the results of each inspection. We have no way to determine the number of airplanes that may need this repair kit:

Labor cost	Parts cost	Total cost per airplane
11 workhours × $65 per hour $715	Approximately $200 per repair kit with one to three kits necessary depending on the extent of the cracks (possible total of $600 per airplane).	Ranging from $915 per airplane to $1,315 per airplane.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2004–CE–01–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 93–25–07, Amendment 39–8773, and by adding a new AD to read as follows:

2005–01–18 Raytheon Aircraft Company: Amendment 39–13943; Docket No. 2004–CE–01–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on March 1, 2005.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 93–25–07, Amendment 39–8773.

What Airplanes Are Affected by This AD?

(c) This AD affects the following Beech airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
(1) A100–1 (U–21J)	BB–3 through BB–5
(2) 200 and B200	BB–2 and BB–6 through BB–1462.
(3) A200 (C–12A) and A200 (C–12C).	BC–1 through BC–75 and BD–1 through BD–30.
(4) A200C (UC–12B)	BJ–1 through BJ–66.
(5) A200CT (C–12D).	BP–1, BP–22, and BP–24 through BP–51.
(6) A200CT (FWC–12D).	BP–7 through BP–11.
(7) A200CT (RC–12D).	GR–1 through GR–13.
(8) A200CT (C–12F)	BP–52 through BP–63.
(9) A200CT (RC–12G).	FC–1 and FC–3.
(10) A200CT (RC–12H).	GR–14 through GR–19.
(11) A200CT (RC–12K).	FE–1 through FE–9.
(12) A200CT (RC–12P).	FE–10 through FE–24.
(13) A200CT (RC–12K).	FE–25 through FE–31.
(14) 200C and B200C	BL–1 through BL–72 and BL–124 through BL–138.
(15) 200CT	BN–1 through BN–4 and B200CT.
(16) 200T	BT–1 through BT–38 and B200T.
(17) B200C (C–12F)	BL–73 through BL–112 and BL–118 through BL–123.
(18) B200C (C–12F)	BP–64 through BP–71.
(19) B200C (UC–12F)	BU–1 through BU–10.
(20) B200C (UC–12M).	BV–1 through BV–12.
(21) B200CT	FG–1 and FG–2.
(22) 300	FA–1 through FA–228.
(23) 300	FF–1 through FF–19.
(24) B300	FL–1 through FL–103.
(25) B300C	FM–1 through FM–8.
(26) B300C	FN–1.

What Is the Unsafe Condition Presented in This AD?

(d) As currently written, AD 93–25–07 allows continued flight if cracks are found in

less than five fuselage stringers in the area of the rear pressure bulkhead. In 1996, FAA developed policy to not allow airplane operation when known cracks exist in primary structure, unless the ability to sustain limit and ultimate load with these cracks is proven. The fuselage stringers in the area of the rear pressure bulkhead are considered primary structure. This AD will bring the actions of AD 93–25–07 in compliance with current FAA policy. The actions specified in this AD are intended to detect and correct any cracked fuselage stringers in the rear pressure bulkhead area, which could result in structural damage to the fuselage. This damage could lead to failure of the fuselage with potential loss of control of the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) For *airplanes that have been known cracks that exist in any of the aft fuselage stringer locations (No. 5 through No. 11 on both the left-hand and right-hand sides).* Either modify or incorporate repairs as specified below. These cracks could have been detected through compliance with AD 93–25–07 and/or Raytheon Mandatory Service Bulletin SB 53–2472, any revision level: (i) Incorporate the applicable modification kit or kits as specified in Raytheon Mandatory Service Bulletin SB 53–2472, Rev. 4, Issued: June, 1993, Revised: July, 2003; or (ii) Incorporate external doubler repairs on all aft fuselage stringer locations (No. 5 through No. 11 on both the left-hand and right-hand sides)	*If airplane has less than five known cracked stringers:* Within 25 cycles after March 1, 2005 (the effective date of this AD), unless already done. If cycles are unknown, then you may divide hours time-in-service (TIS) by .75 (18.75 hours TIS ÷ .75 = 25 cycles). *If airplane has five or more known cracked stringers:* Before further flight after March 1, 2005 (the effective date of this AD), unless already done. AD 93–35–07 already required this.	Incorporate the modification kit(s) following the procedures in Raytheon Mandatory Service Bulletin SB 53–2472, Rev. 4, Issued: June, 1993, Revised: July, 2003. Incorporate the external doubler repairs following the procedures in the maintenance manual.
(2) *For all airplanes that do not have either the modifications or repairs specified in paragraphs (e)(1)(i) and (e)(1)(ii) of this AD incorporated in all aft fuselage stringer locations (No. 5 through No. 11 on both the left-hand and right-hand sides):* Inspect these aft fuselage stringers. If sealant covers the stringers, you must remove it to facilitate the required inspections and then reapplied. You may terminate the repetitive inspections when all aft fuselage stringer locations (No. 5 through No. 11 on both the left-hand and right-hand sides) are modified.	*For airplanes affected by AD 93–25–07:* Initially inspect at the next inspection interval required by AD 93–35–07. Repetitively inspect thereafter at intervals not to exceed 500 cycles. If cycles are unknown, then you may divide TIS by .75 (375 hours TIS ÷ .75 = 500 cycles). *For airplanes not affected by AD 93–25–0-7:* Initially inspect upon accumulating 2,500 cycles on the fuselage or within the next 25 cycles after March 1, 2005 (the effective date of this AD), whichever occurs later, unless already done. Repetitively inspect thereafter at intervals not to exceed 500 cycles. If cycles are unknown, then you may divide hours TIS by .75 (1,875 hours TIS ÷ .75 = 2,500 cycles; 375 hours TIS ÷ .75 = 500 cycles; and 18.75 hours TIS ÷ .75 = 25 cycles).	Inspect following the procedures in Raytheon Mandatory Service Bulletin SB 53–2472. Rev. 4, Issued: June, 1993, Revised: July, 2003.
(3) If any cracks are found during any inspection required by this AD, do one of the following: (i) Incorporate the applicable modification kit or kits as specified in Raytheon Mandatory Service Bulletin SB 53–2472, Rev. 4, Issued: June, 1993, Revised: July, 2003; or (ii) Incorporate external doubler repairs on all aft fuselage stringer locations (No. 5 through No. 22 on both the left-hand and right-hand sides)	*If less than five cracked stringers are found:* Within 25 cycles after March 1, 2005 (the effective date of this AD), unless already done. If cycles are unknown, then you may divide hours TIS by .75 (18.75 hours TIS ÷ .75 = 25 cycles). *If five or more cracked stringers are found:* Before further flight after any inspection where five cracked stringers are found, unless already done.	Incorporate the modification kit(s) following the procedures in Raytheon Mandatory Service Bulletin SB 53–2472, Rev. 4, Issued: June, 1993, Revised: July, 2003. Incorporate the external doubler repairs following the procedures in the maintenance manual.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4107.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Raytheon Mandatory Service Bulletin SB 53–2472, Rev. 4, Issued: June, 1993, Revised: July, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://*

www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Kansas City, Missouri, on January 7, 2005.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–716 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20048; Directorate Identifier 2005–CE–01–AD; Amendment 39–13945; AD 2005–02–01]

RIN 2120–AA64

Airworthiness Directives; The Lancair Company Models LC40–550FG and LC42–550FG Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Lancair Company (Lancair) Models LC40–550FG and LC42–550FG airplanes. This AD requires you to incorporate additional takeoff chart distance values information into the Performance Section of the FAA-approved Airplane Flight Manual (AFM). This AD results from flight testing that revealed that the takeoff distance values for the affected airplanes could not be duplicated. We are issuing this AD to prevent potential impact with terrain or obstruction during takeoff due to incorrect takeoff distance values.

DATES: This AD becomes effective on January 21, 2005. We must receive any comments on this AD by March 18, 2005.

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

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

To get the service information identified in this AD, contact The Lancair Company, 22550 Nelson Road, Bend Oregon 97701; telephone: (541) 330–4191; e-mail: *product_support@lancair.com.*

To view the comments to this AD, go to *http://dms.dot.gov.* The docket number is FAA–2005–20048.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Morfitt, Program Manager, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055–4065; telephone: (425) 917–6405; facsimile: (425) 917–6590.

SUPPLEMENTARY INFORMATION: *What events have caused this AD?* During flight testing for the approval of an optional air conditioning system, Lancair could not duplicate the takeoff performance criteria included in the FAA-approved Airplane Flight Manual (AFM) for the Models LC40–550FG and LC42–550FG airplanes. Lancair found that the currently published information predicts takeoff distances that are as much as 65 percent below that actually required.

What is the potential impact if FAA took no action? Using this incorrect data in certain situations could result in potential impact with terrain or obstruction during takeoff.

Is there service information that applies to this subject? Lancair has issued Mandatory Service Bulletin No. SB–05–001, dated January 4, 2005.

What are the provisions of this service information? The service bulletin includes corrected takeoff chart distance values for the Lancair Models LC40–550FG and LC42–550FG airplanes.

FAA's Determination and Requirements of the AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design.

Since the unsafe condition described previously is likely to exist or develop on other Lancair Models LC40–550FG and LC42–550FG airplanes of the same type design, we are issuing this AD to prevent potential impact with terrain or obstruction during takeoff due to incorrect takeoff distance values.

What does this AD require? This AD requires you to you to incorporate additional takeoff chart distance values information into the Performance Section of the FAA-approved AFM.

In preparing of this rule, we contacted type clubs and aircraft operators to get technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included a discussion of any information that may have influenced this action in the rulemaking docket.

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

Comments Invited

Will I have the opportunity to comment before you issue the rule? This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20048; Directorate Identifier 2005–CE–01-AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA–2005–20048; Directorate Identifier 2005–CE–01–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–02–01 The Lancair Company: Amendment 39–13945; Docket No. FAA–2005–20048; Directorate Identifier 2005–CE–01–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on January 21, 2005.

Are Any Other ADs Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
LC40–550FG	40004 through 40079.
LC42–550FG	42002 through 42062.

What Is the Unsafe Condition Presented in This AD?

(d) This AD results from flight testing that revealed that the takeoff distance values for the affected airplanes could not be duplicated. We are issuing this AD to prevent potential impact with terrain or obstruction during takeoff due to incorrect takeoff distance values.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) To address the unsafe condition, do the following: (i) Using pen and ink, make the following notation in the takeoff distance chart (Figure 5–7) in Section 5 of the FAA-approved Airplane Flight Manual (AFM): ''Caution: See Service Bulletin SB–05–001 for takeoff performance correction.'' (ii) Insert a copy of Lancair Mandatory Service Bulletin SB–05–001, dated January 4, 2005, into Section 5 of the FAA-approved AFM.	Before further flight after January 21, 2005 (the effective date of this AD).	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may do the flight manual changes requirement of this AD. Make an entry in the aircraft records showing compliance with this portion of the AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(2) Lancair will include this information into the next revision of the FAA-approved AFM. Incorporation of the revision that includes this information into Section 5 of the FAA-approved AFM is considered terminating action for paragraphs (e)(1)(i) and (e)(1)(ii) of this AD.	At any time as terminating action	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may do the flight manual changes requirement of this AD. Make an entry in the aircraft records showing compliance with this portion of the AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Seattle Aircraft Certification Office, FAA. For information on any already approved alternative methods of compliance, contact Mr. Jeffrey Morfitt, Program Manager, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055–4065; telephone: (425) 917–6405; facsimile: (425) 917–6590.

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

(g) You may obtain the service information referenced in this AD from The Lancair Company 22550 Nelson Road, Bend, Oregon 97701; telephone: (541) 330–4191; e-mail: *product_support@lancair.com.* To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* This is docket number FAA–2005–20048.

Issued in Kansas City, Missouri, on January 10, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–831 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19443; Directorate Identifier 2004–CE–32–AD; Amendment 39–13942; AD 2005–01–17]

RIN 2120–AA64

Airworthiness Directives; EXTRA Flugzeugbau GmbH Model EA–300 and EA–300/S Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) to supersede AD 98–03–14, which applies to certain EXTRA Flugzeugbau GmbH (EXTRA) Model EA–300 and EA–300/S airplanes. AD 98–03–14 currently requires you to inspect the upper longeron cutout-bridge for cracks, to repair any cracks found, and to modify this area. This AD retains the actions of AD 98–03–14 and incorporates new service information. For owner/operators of the affected airplanes that were able to do the modification required in AD 98–03–14, no further action is required. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to detect and correct cracks in the upper longeron cutout-bridge, which could cause the upper longeron cutout-bridge to fail resulting in structural damage to the fuselage. This condition could lead to loss of control of the airplane.

DATES: This AD becomes effective on February 28, 2005.

On March 16, 1998 (63 FR 5881, February 5, 1998), the Director of the Federal Register approved the incorporation by reference of EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300/S Doc: SB–300–3–93, Issue: A, Date: January 12, 1994.

As of February 28, 2005, the Director of the Federal Register approved the incorporation by reference of EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300/S Doc: SB–300–3–93, Issue: B, Date: June 10, 1998.

ADDRESSES: To get the service information identified in this AD, contact Extra Flugzeugbau GmbH, Flugplatz Dinslaken, D–46569 Hünxe, Germany. To review this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–19443.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, MO 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Luftfahart-Bundesamt (LBA), which is the airworthiness authority for Germany, notified us that life cycle testing of the upper longeron cutout-bridge revealed potential cracks. This condition caused us to issue AD 98–03–14, Amendment 39–10307 (63 FR 5881, February 5, 1998). AD 98–03–14 currently requires you to do the following for certain EXTRA Model EA–300 and EA–300/S airplanes:

—Inspect the upper longeron cutout-bridge for cracks;
—Repair any cracks you find; and
—Modify this area.

You were required to do these actions following EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300/S, Doc: SB–300–3–93, Issue: A, Date: January 12, 1994.

What has happened since AD 98–03–14 to initiate this action? LBA notified FAA of the need to change AD 98–03–14. The LBA reports that not all affected airplanes could have the required modification done following EXTRA Service Bulletin EA–300 & EA–300/S, Doc: SB–300–3–93, Issue: A, Date: January 12, 1994.

Installing the new steel sleeves may cause distortion to the upper longeron bridge cutout and the fuselage. The distortion may cause misalignment of the steel sleeves fore and aft of the cutouts.

This caused EXTRA to issue a new service bulletin. The new service bulletin includes additional procedures for modifying the upper longeron cutout-bridge. If you modify the upper longeron bridge-cutout following Procedure II in the new service bulletin, the new bridges must be replaced every 1,000 hours time-in-service (TIS) (as specified in the new service information.)

What is the potential impact if FAA took no action? If not detected and corrected, cracks in the upper longeron cutout-bridge could cause the upper longeron cutout-bridge to fail, which could result in structural damage to the fuselage. This failure could lead to loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain EXTRA Model EA–300 and EA–300/S airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 12, 2004 (69 FR 65388). The NPRM proposed to supersede AD 98–03–14 with a new AD that would retain the actions required in AD 98–03–14 and incorporate new service information.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD.

Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 54 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $65 per hour = $195	Not applicable	$195	$195 × 54 = $10,530

We estimate the following costs to do any necessary repairs that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need this repair:

Labor cost	Parts cost	Total cost per airplane
10 workhours × $65 per hour = $650	$200	$650 + $200 = $850

What is the difference between the cost impact of this AD and the cost impact of AD 98–03–14? The difference between the cost impact of AD 98–03–14 and this AD is the replacement of the new bridges every 1,000 hours TIS if the upper longeron bridge-cutout is modified following Procedure II of the new service bulletin.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19443; Directorate Identifier 2004–CE–32–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–03–14, Amendment 39–10307 (63 FR 5881, February 5, 1998), and by adding a new AD to read as follows:

2005–01–17 EXTRA Flugzeugbau GmbH: Amendment 39–13942; Docket No. FAA–2004–19443; Directorate Identifier 2004–CE–32–AD; Supersedes AD 98–03–14; Amendment 39–10307.

When Does This AD Become Effective?

(a) This AD becomes effective on February 28, 2005.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 98–03–14, Amendment 39–10307.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that:

(1) Are certificated in any category; and

(2) Have not had the left-hand (LH) and right-hand (RH) upper longeron cutout-bridge inspected and modified following EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300/S Doc: SB–300–3–93, Issue: A, Date: January 12, 1994.

Model	Serial Nos.
EA–300	VI and 01 through 50.
EA–300/S	01 through 17.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to detect and correct cracks in the upper longeron cutout-bridge, which could cause the upper longeron cutout-bridge to fail resulting in structural damage to the fuselage. This condition could lead to loss of control of the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspect the LH and RH upper longeron cutout-bridge, part number (P/N) PC–23102.IX), for cracks.	Upon accumulating 1,000 hours time-in-service (TIS) on the upper longeron or within the next 100 hours TIS after March 16, 1998 (the effective date of AD 98–03–14), whichever occurs later, unless already done.	Follow EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300/S Doc: SB–300–3–93, Issue: A, Date: January 12, 1994; or EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300/S Doc: SB–300–3–93, Issue: B, Date: June 10, 1998.
(2) If you find any cracks in the upper longeron cutout-bridge during the inspection required in paragraph (e)(1) of this AD, do the following: (i) repair any cracks; and (ii) modify the upper longeron cutout-bridge.	Before further flight after the inspection required in paragraph (e)(1) of this AD, unless already done.	Follow EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300/S Doc: SB–300–3–93, Issue: A, Date: January 12, 1994; or EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300/S Doc: SB–300–3–93, Issue: B, Date: June 10, 1998.
(3) If you do not find any cracks in the upper longeron cutout-bridge during the inspection required in paragraph (e)(1) of this AD, you must still modify the upper longeron cutout-bridge.	Before further flight after the inspection required in paragraph (e)(1) of this AD, unless already done.	Follow EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300300/S Doc: SB300–3–93, Issue: A, Date: January 12, 1994; or EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300/S Doc: SB–300–3–93, Issue: B, Date: June 10, 1998.
(4) If you modified the upper longeron cutout-bridge following EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300/S Doc: SB–300–3–93, Issue: A, Date: January 12, 1994, or EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300/S Doc: SB–300–3–93, Issue: B, Date: June 10, 1998, Procedure I, you do not need to do any further actions.	As of February 28, 2005 (the effective date of this AD).	As stated in EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300/S Doc: SB–300–3–93, Issue: A, Date: January 12, 1994, or EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300/S Doc: SB–300–3–93, Issue: B, Date: June 10, 1998.
(5) If you modified the upper longeron cutout-bridge following Procedure II of EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300/S Doc: SB–300–3–93, Issue: B, Date: June 10, 1998, you must replace the new internal bridges every 1,000 hours TIS.	As of February 28, 2005 (the effective date of this AD).	As stated in EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300/S Doc: SB–300–3–93, Issue: B, Date: June 10, 1998.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, MO 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) German AD Number D–1994–043R1, dated May 17, 2004, also addresses the subject of this AD.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300/S Doc: SB–300–3–93, Issue: A, Date: January 12, 1994; or EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300/S Doc: SB–300–3–93, Issue: B, Date: June 10, 1998.

(1) On March 16, 1998 (63 FR 5881, February 5, 1998) and in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, the Director of the Federal Register approved the incorporation by reference of EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300/S Doc: SB–300–3–93, Issue: A, Date: January 12, 1994.

(2) As of February 28, 2005, and in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, the Director of the Federal Register approved the incorporation by reference of EXTRA Flugzeugbau GmbH Service Bulletin EA–300 & EA–300/S Doc: SB–300–3–93, Issue: B, Date: June 10, 1998.

(3) To get a copy of this service information, contact EXTRA Flugzeubau GmbH, Flugplatz Dinslaken, D–46569 Hünxe, Germany. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_ register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2004–19443.

Issued in Kansas City, Missouri, on January 5, 2005.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–607 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19583; Airspace Docket No. 04–ACE–73]

Modification of Class E Airspace; Coffeyville, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Coffeyville, KS. A review of controlled airspace for Coffeyville Municipal Airport revealed it does not comply with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. The area is modified and enlarged to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, May 12, 2005. Comments for inclusion in the Rules Docket must be received on or before March 2, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19583/ Airspace Docket No. 04–ACE–73, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Coffeyville, KS. An examination of controlled airspace for Coffeyville Municipal Airport revealed it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL, taking into consideration rising terrain, is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment expands the airspace area from a 6.6-mile radius to a 7.6-mile radius of Coffeyville Municipal Airport, eliminates the extension to the airspace area, deletes reference to the Coffeyville nondirectional radio beacon (NDB) in the legal description and brings the legal description of the Coffeyville, KS Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will be come effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19583/Airspace Docket No. 04–ACE–73.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Coffeyville Municipal Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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 Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

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

* * * * *

ACE KS E5 Coffeyville, KS

Coffeeyville Municipal Airport, KS
(Lat 37°05′39″ N., long. 95°34′19″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Coffeyville Municipal Airport.

* * * * *

Issued in Kansas City, MO, on January 3, 2005.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–971 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD07–04–118]

RIN 1625–AA87

Security Zone Regulations; St. Croix, United States Virgin Islands

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the vicinity of the HOVENSA refinery facility in St. Croix, U.S. Virgin Islands. This security zone extends approximately 2 miles seaward from the HOVENSA facility waterfront area along the south coast of the island of St. Croix, U.S. Virgin Islands. This security zone is needed for national security reasons to protect the public and the HOVENSA facility from potential subversive acts. Vessels without scheduled arrivals must receive permission from the U.S. Coast Guard Captain of the Port San Juan prior to entering this temporary security zone.

DATES: This rule is effective from November 5, 2004, until May 15, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD07–04–118] and are available for inspection or copying at Sector San Juan, 5 Calle La Puntilla, San Juan, Puerto Rico between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Katiuska Pabon, Sector San Juan, Puerto Rico at (787) 289–0739.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM and delaying the rule's effective date would be contrary to the public interest. Immediate action is needed to protect the public, ports and waterways of the United States from potential subversive acts against the HOVENSA facility.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Similar regulations were published in the **Federal Register** on January 17, 2002 (67 FR 2332), September 13, 2002 (67 FR 57952), April 28, 2003 (68 FR 22296), July 10, 2003 (68 FR 41081), February 10, 2004 (69 FR 6150), and May 21, 2004 (69 FR 29232). We did not receive any comments on these regulations.

The Captain of the Port San Juan has determined that due to the continued risk and recent necessary increases in maritime security levels, the need for the security zone persists. While the Coast Guard intends to publish a notice of proposed rulemaking and permanent rule to ensure the security of this waterfront facility, this temporary final rule is required in the interim.

Background and Purpose

Based on the September 11, 2001, terrorist attacks and recent increases in maritime security levels, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the HOVENSA refinery on St. Croix, USVI, against tank vessels and the waterfront facility. Given the highly volatile nature of the substances stored at the HOVENSA facility, this security zone is necessary to decrease the risk of subversive activity launched against the HOVENSA facility. The Captain of the Port San Juan is reducing this risk by prohibiting all vessels without a scheduled arrival from coming within approximately 2 miles of the HOVENSA facility, unless specifically permitted by the Captain of the Port San Juan or a designated representative. The Captain of the Port San Juan can be reached on VHF Marine Band Radio, Channel 16 (156.8 Mhz), or by calling (787) 289–2040, 24-hours-a-day, 7-days-a-week. The HOVENSA Facility Port Captain can be reached on VHF Marine Band Radio channel 11 (156.6 Mhz) or by calling (340) 692–3488, 24-hours-a-day, 7-days-a-week.

Discussion of Rule

The temporary security zone around the HOVENSA facility encompasses all waters within a line connecting the following coordinates: 17°41′31″ N, 64°45′09″ W, to 17°39′36″ N, 64°44′12″ W, to 17°40′00″ N, 64°43′36″ W, to 17°41′48″ N, 64°44′25″ W, and back to the beginning point. All vessels without a scheduled arrival into the HOVENSA facility are prohibited from coming within this security zone—that extends approximately 2 mile seaward from the facility, unless specifically permitted by the Captain of the Port San Juan or a designated representative.

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). This security zone covers an area that is not typically used by commercial vessel traffic, including fishermen, and vessels may be allowed to enter the zone on a case-by-case basis with the permission of the Captain of the Port San Juan or a designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic effect upon 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 will affect the following

entities, some of which may be small entities: Owners of small charter fishing or diving operations that may operate near the HOVENSA facility. This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This zone covers an area that is not typically used by commercial fishermen, and vessels may be allowed to enter the zone on a case-by-case basis with the permission of the Captain of the Port San Juan.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though 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 rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' (CED) are not required for this rule.

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. From November 5, 2004, to May 15, 2005, add a new § 165.T07–118 to read as follows:

§ 165.T07–118 Security Zone; HOVENSA Refinery, St. Croix, U.S. Virgin Islands.

(a) *Location.* The following area is a security zone: All waters from surface to bottom, encompassed within a line connecting the following coordinates:

17°41′31″ N, 64°45′09″ W, to 17°39′36″ N, 64°44′12″ W, to 17°40′00″ N, 64°43′36″ W, to 17°41′48″ N, 64°44′25″ W, and then back to the point of origins.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, with the exception of vessels that have an arrival scheduled with the HOVENSA Facility, no vessel may enter the regulated area unless specifically authorized by the Captain of the Port (COTP) San Juan, a Coast Guard commissioned, warrant, or petty officer designated by COTP San Juan. The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (156.8 Mhz). The Captain of the Port San Juan can be reached on VHF Marine Band Radio, Channel 16 (156.8 Mhz) or by calling (787) 289–2040, 24-hours-a-day, 7-days-a-week. The HOVENSA Facility Port Captain can be reached on VHF Marine Band Radio channel 11 (156.6 Mhz) or by calling (340) 692–3488, 24-hours-a-day, 7-days-a-week.

(c) *Dates.* This section is effective from November 5, 2004, until May 15, 2005.

Dated: November 5, 2004.

E. Emeric,

Commander, U.S. Coast Guard, Captain of the Port, San Juan.

[FR Doc. 05–962 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 2004–T–051]

RIN 0651–AB83

Changes in Fees for Filing Applications for Trademark Registration

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) is amending its rules of practice to adjust the fee for filing a trademark application for registration based on whether the application is filed on paper or electronically using the Trademark Electronic Application System (TEAS). Specifically, the Office is amending its rules to provide that: The fee for a trademark application filed on paper shall be increased to $375.00 for each class of goods or services; and the fee for a trademark application filed through TEAS shall be decreased to $325.00 for each class of goods or services.

EFFECTIVE DATE: January 31, 2005.

FOR FURTHER INFORMATION CONTACT: Cheryl Black, Office of the Deputy Commissioner for Trademark Examination Policy, by telephone at (571) 272–9565, or by e-mail to *cheryl.black@uspto.gov.*

SUPPLEMENTARY INFORMATION: The Office is amending the trademark rules of practice governing the payment of fees for trademark applications to require payment based on whether the application is filed on paper or electronically through TEAS. Specifically, the Office is amending its rules to provide that: (1) The fee for a trademark application filed on paper shall be increased to $375.00 for each class of goods or services; and (2) the fee for a trademark application filed through TEAS shall be decreased to $325.00 for each class of goods or services.

Background

The Consolidated Appropriations Act 2005, Pub. L. 108–447, (Appropriations Act) was enacted on December 8, 2004. The Appropriations Act amends the Trademark Act of 1946 to require that:

> [D]uring fiscal years 2005 and 2006, under such conditions as may be prescribed by the Director, the fee under § 31(a) of the Trademark Act * * * for (1) the filing of a paper application for trademark registration shall be $375; (2) the filing of an electronic application shall be $325; and (3) the filing of an electronic application meeting certain additional requirements prescribed by the Director shall be $275.

This final rule adjusts the trademark application filing fees for applications filed pursuant to § 1 or 44 of the Trademark Act on paper to $375.00 per class and applications filed pursuant to § 1 or 44 of the Trademark Act through TEAS to $325.00 per class in accordance with the provisions of 15 U.S.C. 1113(a), as amended by the Appropriations Act. The purpose of the lower fee for TEAS applications is to encourage applicants to file trademark applications electronically and to respond to any outstanding issues electronically. The Director will not prescribe rules for electronic applications that qualify for a filing fee of $275.00 until the Office deploys the information technology systems necessary to process these applications. Electronic applications in this third category will have additional filing date requirements.

The filing fee for Madrid Protocol applications under § 66(a) of the Trademark Act (66(a) applications) will remain unchanged. The Office will amend the filing fee for 66(a) applications in accordance with the requirements and procedures set forth in the Rule 35 of the Common Regulations Under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to That Agreement (Common Regs.) (April 1, 2004) and issue a notice of the effective date of the change. The rule change in § 2.6 is waived as to 66(a) applications until the procedures required by the Common Regs. are completed.

References below to ''the Act,'' ''the Trademark Act,'' or ''the statute'' refer to the Trademark Act of 1946, 15 U.S.C. 1051, *et seq.*, as amended.

Discussion of Specific Rules

The Office is amending rules 2.6, 2.86 and 2.87.

The Office is revising § 2.6(a)(1) to provide that the fee for filing an application on paper is $375.00 per class, and that the fee for filing an application through TEAS is $325.00 per class.

The Office is amending § 2.86(a)(2) to provide that the filing fees for a multiple class application are based on § 2.6, which lays out a two-track fee system based on whether payment is made on paper or through TEAS. For example, if the applicant files a single class application through TEAS, the applicant must pay the TEAS application filing fee for the class identified in the application. If, on examination, the Office determines that it is a multiple class application, the applicant may respond through TEAS and pay the TEAS application filing fee for each additional class. Alternatively, the applicant may respond by mail or fax and pay the paper application filing fee for each additional class.

The Office is revising § 2.87(b) to provide that where a new separate application is created from a request to divide out some, but not all, of the goods or services in a class, the applicant must pay the fee for dividing the application and the applicable application filing fee as set forth in § 2.6(a)(1). Currently division requests can only be filed on paper, so the applicable filing fee will be $375.00 per class. However, in the future it will be possible to file a request to divide through TEAS, and at that point, if the request to divide is filed through TEAS,

the TEAS application filing fee will apply.

Rule Making Requirements

Administrative Procedure Act: The final rule changes certain fees for filing trademark applications in order to conform to the trademark fees specified in 15 U.S.C. 1113(a) as amended by the Appropriations Act. Because these changes merely implement the fees set forth in the Appropriations Act, these rule changes involve interpretive rules and/or rules of agency practice and procedure under 5 U.S.C. 553(b)(A). *See Bachow Communications Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001); *Paralyzed Veterans of America* v. *West* 138 F.3d 1434, 1436 (Fed. Cir. 1998); and *Komjathy* v. *National Transportation Safety Board,* 832 F.2d 1294, 1296–97 (D.C. Cir. 1987). Therefore, this final rule may be adopted without prior notice and opportunity for public comment under 5 U.S.C. 553(b) and (c), or thirty-day advance publication under 5 U.S.C. 553(d).

This final rule may also be adopted without thirty-day advance publication of the fee changes pursuant to 15 U.S.C. 1113(a). While nothing in the Appropriations Act or any other law requires delayed implementation of the fee changes in order to implement these fee changes, the Office must reprogram the trademark electronic filing system to accept the reduced fee. If TEAS is not reprogrammed before the fee changes go into effect, the Office will have to issue refunds to thousands of applicants for the amount paid in excess of the lower application filing fee. Such a corrective measure would be an administrative burden to the Office and to the public. Therefore, the Director has decided to briefly delay the implementation of the fee changes to allow the Office sufficient time to make the necessary programming changes. This final rule will go into effect on January 31, 2005.

Regulatory Flexibility Act

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), neither a regulatory flexibility analysis nor a certification are required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). *See* 5 U.S.C. 603.

Executive Order 13132

This rule making does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866

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

Paperwork Reduction Act

This rule making involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this rule have been reviewed and previously approved by OMB under the following control numbers: 0651–0009, 0651–0050.

List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Trademarks.

■ For the reasons given in the preamble and under the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 2, as amended, the Office is amending part 2 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for 37 CFR Part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 2, unless otherwise noted.

■ 1a. Amend § 2.6 by revising paragraph (a)(1) to read as follows:

§ 2.6 Trademark fees.

* * * * *

(a) * * *

(1) For filing an application:

(i) On paper, per class—$375.00

(ii) Through TEAS, per class—$325.00

* * * * *

■ 2. Amend § 2.86 by revising paragraph (a)(2) to read as follows:

§ 2.86 Application may include multiple classes.

(a) * * *

(2) Submit an application filing fee for each class, as set forth in § 2.6(a)(1).

* * * * *

■ 3. Amend § 2.87 by revising paragraph (b) to read as follows:

§ 2.87 Dividing an application.

* * * * *

(b) In the case of a request to divide out one or more entire classes from an application, only the fee for dividing an application under paragraph (a) of this section, as set forth in § 2.6(a)(19), will be required. However, in the case of a request to divide out some, but not all, of the goods or services in a class, the application filing fee, as set forth in § 2.6(a)(1), for each new separate application to be created by the division must be submitted, together with the fee for dividing an application under paragraph (a) of this section, as set forth in § 2.6(a)(19).

* * * * *

Dated: December 29, 2004.

Stephen M. Pinkos,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 05–833 Filed 1–18–05; 8:45 am]

BILLING CODE 3510–16–P

POSTAL SERVICE

39 CFR Part 111

Periodicals Mail Enclosed With Merchandise Sent at Parcel Post or Bound Printed Matter Rates

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule allows sample copies of authorized and pending Periodicals publications to be enclosed with merchandise mailed at Parcel Post or Bound Printed Matter postage rates.

DATES: Effective October 3, 2004.

FOR FURTHER INFORMATION CONTACT: Donald Lagasse, (202) 268–7269, *Donald.T.Lagasse@usps.gov.*

SUPPLEMENTARY INFORMATION: On February 25, 2004, pursuant to 39 U.S.C. 83623, the Postal Service filed with the Postal Rate Commission a request for a decision recommending a minor mail classification change. The change allows sample copies of authorized and pending Periodicals publications to be enclosed with merchandise mailed at Parcel Post or Bound Printed Matter rates. This change was approved by the Board of Governors on July 19, 2004, with an implementation date of October 3, 2004.

This change does not affect any existing standards (*e.g.*, circulation requirements) for Periodicals rates. To determine postage on mail entered under the new standard, postage of the Parcel Post or Bound Printed Matter rates is based on the combined weight of the sample publication and the host piece.

This change is desirable from the point of view of both publishers and the Postal Service because it provides another venue for promoting Periodicals and Package Services. The new standards benefit customers, printers, advertisers, and all affected parties by providing an opportunity for additional subscriptions, thereby creating more revenue and volume.

Since advertising is not permitted in items mailed at Library Mail and Media Mail rates, enclosures of Periodicals publications sample copies are limited to Parcel Post and Bound Printed Matter mailpieces.

Summary of Comments

The Postal Service received three comments on the September 2, 2004, proposal (69 FR 53664). Two commenters strongly supported the proposal, but requested that the Postal Service expand the rule to include merchandise sent at Standard Mail rates. This request is outside the scope of this rulemaking. The Postal Rate Commission case authorized only a limited exception to the prohibition against entering Periodicals at Package Service rates. The prohibition against enclosing Periodicals in Standard Mail pieces remains in place at this time. The third commenter expressed concerns as to why the Postal Service provides discounts to any mailer at any mail class. This comment is also outside the scope of this rulemaking, and postal policies in this area are consistent with the ratemaking provisions established by statute.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (*see* 39 CFR part 111).

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Amend the following sections of the Domestic Mail Manual (DMM) as set forth below:

E Eligibility

* * * * *

E700 Package Services

E710 Basic Standards

1.0 BASIC INFORMATION

1.1 Definition

[Amend 1.1 by revising the first sentence to read as follows:]

Package Services mail consists of mailable matter that is neither mailed or required to be mailed as First-Class Mail nor entered as Periodicals (except as permitted under 1.7) unless permitted or required by standard or as Customized MarketMail under E660.

* * *

* * * * *

[Add new section 1.7 to read as follows:]

1.7 Attachments or Enclosures of Periodicals Sample Copies

Sample copies of authorized and pending Periodicals publications may be enclosed or attached with merchandise sent at Parcel Post or Bound Printed Matter rates. Postage at the Parcel Post or Bound Printed Matter rates is based on the combined weight of the host piece and the sample copies enclosed.

* * * * *

An appropriate amendment to 39 CFR part 111 will be published to reflect these changes.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 05–975 Filed 1–18–05; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–OH–0003; FRL–7850–4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

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

DATES: This ''direct final'' rule is effective on March 21, 2005 unless EPA receives adverse written comments by February 18, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by Regional Material in eDocket (RME) ID No. R05–OAR–2004–OH–0003 by one of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments. Agency Web site: *http://docket.epa.gov/rmepub/.* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search'' then key in the instructions for submitting comments.

E-mail: bortzer.jay@epa.gov.

Fax: (312) 886–5824.

Mail: You may send written comments to:

J. Elmer Bortzer, Chief, Air Programs Branch, (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), 18th floor, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2004–OH–0003. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, *regulations.gov*, or e-mail. The EPA RME 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. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

Docket: All documents in the electronic docket are listed in the RME 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. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone John Paskevicz, Engineer, at (312) 886–6084, before visiting the Region 5 office.) This EPA office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

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

SUPPLEMENTARY INFORMATION:

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I. General Information

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

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

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

II. Background

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

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

B. Who Is Affected by Today's Rule?

This rule revision affects all refineries in Ohio which have carbon monoxide boilers associated with fluidized catalytic cracking units. There are three refineries in Ohio which are affected by this rule change. However, since the beginning of the NO_X trading program, all three refineries have been granted an exemption from the monitoring, recordkeeping and reporting requirements of the Ohio NO_X budget rule and the requirements of the NO_X SIP Call. The exemption was granted in writing by EPA. Ohio had already completed the change to its rules and there was no need for the refiners to request an exemption from Ohio.

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

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

TABLE I

Reference	Description of change
3745–14–01(B)(2)(h)	Changed the definition of ''boiler'' to exclude CO boilers associated with combusting CO from fluidized catalytic crackers at petroleum refineries.
3745–14–01(B)(2)(q)	Changed the definition of ''continuous emission monitoring system'' to coincide with the definition in 40 CFR Part 97.
3745–14–01(B)(2)(z)	Corrected a typographical error, changed the word ''combination'' with the word ''combustion.''
3745–14–01(C)(1)	Changed the applicability of the rules for cogeneration units.
3745–14–01(D)(2)(c)	Made minor corrections to references within this section of the rule.
3745–14–01(G)	This chapter was amended to add significant amounts of State EPA and Federal EPA materials through incorporation by reference (IBR). The text of the incorporated material is not included but the specific materials incorporated as they exist on the effective date of the State rule are made part of the regulations and are listed in detail in the revised rule. Items included as part of the IBR are: the Clean Air Act and specific sections of Title IV; specific elements of part 51, part 52, part 60, part 72, and part 75 of the Code of Federal Regulations, and the Ohio EPA Weekly Review.
3745–14–03(B)(3)(a)	Made a minor correction to reference within this section of the rule.
3745–14–05(A)	This is the section of the Ohio rule which identifies the total number of allowances in the State's trading budget. The exclusion of FCCU–CO boilers from the requirements of the NO_X program changes both the total number of allowances and the number of allowances for regulated non- electric generating units listed in appendix B of the State's plan. Details regarding this change are found in the State's revised budget demonstration. The revised total trading program budget includes 49,460 NO_X allowances. The revised number of NO_X allowances, for non-electric generating units, is 4,028.
3745–14 Appendix B	Appendix B is the list of regulated non-electric generating units subject to the 3745–14 NO_X budget program. This revised appendix reflects the exclusion of FCCU–CO boilers from the trading program. And it also incorporates the 16 NO_X allowances for Premcor's unit B026.

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

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

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

TABLE II

Company	Unit	No_X emission budget			NO_X allowance allocations	
		Uncontrolled	Controlled		2002 rule	2004 revision
		2002 rule & 2004 revision	2002 rule	2004 revision		
Premcor	B026	40	40	16	0	16
Sunoco	B044	78	31	78	36	0
	B046	56	22	56	19	0
Total for all non-EGUs		50,001	49,194	40,251	4,067	4,028

D. How Does This Change Affect NO_X Sources?

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

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

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

* * * a plan * * *'' Ohio provided reasonable notice and public input.

Ohio's Revised Administrative Code states that the Director of the Ohio Environmental Protection Agency ''* * * may conduct public hearings on any plan for the prevention, control, and abatement of air pollution that the director is required to submit to the Federal government.'' (Ohio Revised Code Chapter 3704.03, Powers of the director of environmental protection.)

On October 21, 2003, Ohio advised the affected community of a proposed rulemaking and public hearing concerning Rules 3745–14–01, 3745–14–03, and 3745–14–05 of the Ohio Administrative Code. Notice was made available to the public and affected industries via Ohio EPA's web site and by direct electronic mail to the State's list of interested parties. This notice announced a thirty-day comment period beginning October 21, 2003. Comments were received and the rule was revised in response to the comments and again made available on the State's website. A public hearing was held in Columbus on March 11, 2004, at which no comments were made, and no comments were received via either U.S. Mail or electronic mail.

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

F. Why Is EPA Approving This Revision?

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

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

III. Final Action

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

In the event we receive substantive adverse comment, this direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on a proposed rule published elsewhere in today's **Federal Register**.

IV. Supplementary Information—Electronic Filing

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an electronic public rulemaking file available for inspection on RME and a hard copy file which is available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under RME ID No. R05–OAR–2004–OH–0003. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that, if at all possible, you contact the person 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 a.m. to 4:30 p.m. excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available

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

at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking Region 5 RME ''R05–OAR–2004–OH–0003'' 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.

For detailed instructions on submitting public comments and on what to consider as you prepare your comments see the **ADDRESSES** section and the section I General Information of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

V. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

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

For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act

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

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132 Federalism

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

Executive Order 13045 Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 21, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Reporting and recordkeeping requirements.

Dated: December 3, 2004.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(132) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(132) On June 28, 2004, the Ohio Environmental Protection Agency submitted revisions to OAC rule 3745–14–01. These revisions change the definition of ''boiler'' by excluding from the trading program carbon monoxide (CO) boilers associated with combusting CO from fluidized catalytic cracking units at petroleum refineries, change the definition of continuous emission monitoring system to coincide with the definition in 40 CFR part 97, and change the applicabililty of the rules for cogeneration units. The submittal also includes revisions to OAC rule 3745–14–03 (A housekeeping correction to reference OAC Chapter 3745–77 concerning Title V operating permit) and 3745–14–05 (Revising the number of trading program budget allowances and source identification for the ozone seasons 2004 through 2007).

(i) Incorporation by reference.

(A) Ohio Administrative Code rules 3745–14–01, 3745–14–03, and 3745–14–05, effective May 25, 2004.

[FR Doc. 05–1032 Filed 1–18–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: *Effective Dates:* The effective dates for these modified BFEs are indicated on the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and record keeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas:					
Pulaski (Case No.: 03–06–2056P) (FEMA Docket No. P–7636).	City of Little Rock.	March 18, 2004; March 25, 2004; *Arkansas Democrat Gazette*.	The Honorable Jim Dailey, Mayor, City of Little Rock, Little Rock City Hall, Room 203, 500 West Markham, Little Rock, AR 72201.	June 24, 2004	050181
Benton (Case No.: 03–06–2052P) (FEMA Docket No. P–7636).	City of Rogers ..	May 19, 2004; May 26, 2004; *The Rogers Hometown News*.	The Honorable Steve Womack, Mayor, City of Rogers, 300 W. Poplar Street, Rogers, AR 72756.	May 3, 2004	050013
Illinois:					
St. Clair (Case No.: 04–05–2333P) (FEMA Docket No. P–7636).	City of Belleville	May 5, 2004; May 12, 2004; *The Belleville Journal*.	The Honorable Mark A. Kern, Mayor, City of Belleville, 101 South Illinois Street, Belleville, IL 62220.	Aug. 12, 2004	170618
Will (Case No.: 04–05–0084P) (FEMA Docket No. P–7636).	Village of Frankfort.	May 20, 2004; May 27, 2004; *The Herald News*.	The Honorable Ray Rossi, Mayor, Village of Frankfort, 432 West Nebraska Street, Frankfort, IL 60423.	May 4, 2004	170701
Cook (Case No.: 03–05–3383P) (FEMA Docket No. P–7636).	Village of Orland Park.	May 20, 2004; May 27, 2004; *Orland Township Messenger*.	The Hon. Daniel McLaughlin, Mayor, Village of Orland Park, Village Hall, 14700 South Ravinia Avenue, Orland Park, IL 60462.	Aug. 26, 2004	170140
Will (Case No.: 03–05–2577P) (FEMA Docket No. P–7634).	Unincorporated Areas.	Feb. 18, 2004; Feb. 25, 2004; *The Herald News*.	The Honorable Joseph Mikan, Will County Executive, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	May 26, 2004	170695
Indiana:					
Hendricks (Case No.: 03–05–3373P) (FEMA Docket No. P–7636).	Unincorporated Areas.	May 17, 2004; May 24, 2004; *Hendricks County Flyer*.	The Hon. Steven L. Ostermeier, President, Board of Commissioners, Hendricks County Gov't. Center, 355 South Washington, Suite 204, Danville, IN 46122.	Aug. 23, 2004	180415
Marion (Case No.: 03–05–3997P) (FEMA Docket No. P–7636).	City of Indianapolis.	May 21, 2004; May 28, 2004; *The Indianapolis Star*.	The Honorable Barthen Peterson, Mayor, City of Indianapolis, 200 East Washington Street, Suite 2501, City-County Building, Indianapolis, IN 46204.	Aug. 27, 2004	180159
Iowa: Polk (Case No.: 03–07–499P) (FEMA Docket No. P–7636).	City of Ankeny	Apr. 20, 2004; Apr. 27, 2004; *Ankeny Press Citizen*.	The Honorable Merle O. Johnson, Mayor, City of Ankeny, City Hall, 410 West First Street, Ankeny, IA 50021.	July 27, 2004	190226
Michigan:					
Wayne (Case No.: 03–05–3992P) (FEMA Docket No. P–7636).	Township of Canton.	May 20, 2004; May 27, 2004; *Canton Eagle*.	The Honorable Thomas Yack, Township Supervisor, Township of Cantonm 1150 South Canton Center, Canton, MI 48188.	Aug. 26, 2004	260219
Ingham (Case No.: 03–05–5186P) (FEMA Docket No. P–7636).	Charter Township of Meridian.	May 23, 2004; May 30, 2004; *The Town Courier*.	The Honorable Gerald Richards, Township Manager, Charter Township of Meridian, 5151 Marsh Road, Okemos, MI 48864–1198.	Aug. 29, 2004	260093
Oakland (Case No.: 03–05–5165P) (FEMA Docket No.: P–7634).	City of Novi	February 19, 2004; February 26, 2004; *The Novi News*.	The Honorable Lou Csordas, Mayor, City of Novi, 45175 West 10 Mile Road, Novi, MI 48375.	Feb. 5, 2004	260175
Minnesota: Washington (Case No.: 03–05–2576P) (FEMA Docket No. P–7636).	City of Hugo	Mar. 31, 2004; Apr. 7, 2004; *The White Bear Press*.	The Honorable Fran Miron, Mayor, City of Hugo, 14669 Fitzgerald Avenue North, Hugo, MN 55038.	Mar. 19, 2004	270504
Missouri: Lincoln (Case No.: 03–07–102P) (FEMA Docket No. P–7634).	City of Troy	Feb. 11, 2004; Feb. 18, 2004; *Troy Free Press*.	The Hon. Charles H. Kemper, Jr. Mayor, City of Troy, P.O. Box 86, Troy, MO 63379.	May 19, 2004	290641

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Nebraska: Lancaster (Case No.: 04–07–030P) (FEMA Docket No. P–7636).	City of Lincoln ..	May 28, 2004; June 4, 2004; LINCOLN JOURNAL STAR.	The Honorable Coleen J. Seng, Mayor, City of Lincoln, 555 South 10th Street, Lincoln, NE 68508.	May 5, 2004	315273
New Mexico:					
Bernalillo (Case No.: 03–06–2542P) (FEMA Docket No. P–7634).	City of Albuquerque.	Feb. 6, 2004; Feb. 13, 2004; *Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Jan. 27, 2004	350002
Bernalillo (Case No.: 04–06–039P) (FEMA Docket No. P–7636).	City of Albuquerque.	Apr. 30, 2004; May 7, 2004; *Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Apr. 16, 2004	350002
Bernalillo (Case No.: 03–06–1927P) (FEMA Docket No. P–7636).	City of Albuquerque.	May 19, 2004; May 26, 2004; *Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Aug. 25, 2004	350002
Bernalillo (Case No.: 03–06–832P) (FEMA Docket No. P–7636).	City of Albuquerque.	June 11, 2004; June 18, 2004; *Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Sept. 17, 2004	350002
Bernalillo (Case No.: 04–06–671P) (FEMA Docket No. P–7636).	City of Albuquerque.	Apr. 15, 2004; Apr. 22, 2004; *Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Mar. 23, 2004	350002
Bernalillo (Case No.: 04–06–039P) (FEMA Docket No. P–7636).	Unincorporated Areas.	Apr. 30, 2004; May 7, 2004; *Albuquerque Journal*.	The Honorable Tom Rutherford, Chairman, Bernalillo County, One Civic Plaza NW, Albuquerque, NM 87102.	Apr. 16, 2004	350001
Bernalillo (Case No.: 03–06–2542P) (FEMA Docket No. P–7634).	Unincorporated Areas.	Feb. 6, 2003; Feb. 13, 2003; *Albuquerque Journal*.	The Honorable Tom Rutherford, Chairman, Bernalillo County, One Civic Plaza NW, Albuquerque, NM 87102.	Jan. 27, 2004	350001
Bernalillo (Case No.: 04–06–654P) (FEMA Docket No. P–7636).	Unincorporated Areas.	May 6, 2004; May 13, 2004; *Albuquerque Journal*.	The Honorable Tom Rutherford, Chairman, Bernalillo County, One Civic Plaza NW, Albuquerque, NM 87102.	Apr. 20, 2004	350001
Ohio:					
Butler (Case No.: 03–05–3976P) (FEMA Docket No. P7636).	Unincorporated Areas.	May 19, 2004; May 26, 2004; *Middletown Journal*.	The Honorable Michael A. Fox, President, Butler County, Commissioners, Government Services Center, 315 High Street, 6th Floor, Hamilton, OH 45011.	Aug. 25, 2004	390037
Butler & Warren (Case No.: 03–05–3976P) (FEMA Docket No. P–7636).	Village of Monroe.	May 19, 2004; May 26, 2004; *Middletown Journal*.	The Honorable Robert Routson, Mayor, Village of Monroe, 233 South Main Street, Monroe, OH 45050–0330.	Aug. 25, 2004	390042
Warren (Case No.: 03–05–5187P) (FEMA Docket No. P–7636).	Village of Springboro.	May 13, 2004; May 20, 2004; *The Springboro Star Press*.	The Honorable John Agenbroad, Mayor, Village of Springboro, 320 West Central Avenue, Springboro, OH 45066.	Aug. 19, 2004	390564
Warren (Case No.: 03–05–5187P) (FEMA Docket No. P–7636).	Unincorporated Areas.	May 13, 2004; May 20, 2004; *The Springboro Star Press*.	Mr. C. Michael Kilburn, President, Warren County Board of Commissioners, 320 West Central Avenue, Springboro, OH 45066.	Aug. 19, 2004	390757
Oklahoma:					
Oklahoma (Case No.: 04–06–131P) (FEMA Docket No. P–7636).	City of Oklahoma City.	May 28, 2004; June 4, 2004; *The Daily Oklahoman*.	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, OK 73102.	May 5, 2004	405378

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma (Case No.: 04–06–140P) (FEMA Docket No. P–7634).	City of Oklahoma City.	Jan. 15, 2004; Jan. 22, 2004; *The Daily Oklahoman*.	The Honorable Guy Liebmann, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, OK 73102.	Dec. 30, 2003	405378
Texas:					
Williamson (Case No.: 04–06–651P) (FEMA docket No. P–7636).	City of Cedar Park.	May 19, 2004; May 26, 2004; *The Hill Country News*.	The Honorable Bob Young, Mayor, City of Cedar Park, 600 North Bell Boulevard, Cedar Park, TX 78613.	Aug. 25, 2004	481282
Fort Bend (Case No.: 04–06–561P) (FEMA Docket No. P–7636).	Fort Bend County MUD No. 23.	May 19, 2004; May 26, 2004; *Fort Bend Star*.	Mr. Mark Massey, President, Board of Directors, Fort Bend County, MUD No. 23, 301 Jackson Street, Richmond, TX 77469.	Apr. 30, 2004	481590
Dallas (Case No.: 03–06–192P) (FEMA Docket No. P–7634).	City of Grand Prairie.	Jan. 22, 2004; Jan. 29, 2004; *Grand Prairie Morning News*.	The Honorable Charles England, Mayor, City of Grand Prairie, 317 College Street, Grand Prairie, TX 75050.	Jan. 12, 2004	485472
Harris (Case No.: 04–06–132P) (FEMA Docket No. P–7636).	Unincorporated Areas.	Mar. 3, 2004; Mar. 10, 2004; *The Houston Chronicle*.	The Honorable Robert A. Eckels, Judge, Harris County, 1001 Preston, Suite 911, Houston, TX 77002.	Feb. 9, 2004	480287
Collin (Case No.: 03–06–2322P) (FEMA Docket No. P–7634).	City of McKinney.	Feb. 11, 2004; Feb. 18, 2004; *McKinney Courier-Gazette*.	The Honorable Bill Whitfield, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	May 19, 2004	480135
Dallas (Case No.: 03–06–1529P) (FEMA Docket No. P–7634).	City of Mesquite	Feb. 5, 2004; Feb. 12, 2004; *Mesquite Morning News*.	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185.	Jan. 21, 2004	485490
Dallas (Case No.: 03–06–1221P) (FEMA Docket No. P–7634).	City of Mesquite	Feb. 19, 2004; Feb. 26, 2004; *The Mesquite News*.	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185.	Jan. 29, 2004	485490
Midland (Case No.: 03–06–2045P) (FEMA Docket No. P–7634).	City of Midland	Jan. 22, 2004; Jan. 29, 2004; *Midland Reporter-Telegram*.	The Honorable Michael J. Canon, Mayor, City of Midland, 300 North Loraine, Midland, TX 79701.	Apr. 30, 2004	480477
Bexar (Case No.: 03–06–2544P) (FEMA Docket No. P–7636).	City of San Antonio.	May 24, 2004; May 31, 2004; *San Antonio Express News*.	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283–3966.	Aug 30, 2004	480045
Bexar (Case No.: 03–06–2679P) (FEMA Docket No. P–7636).	City of San Antonio.	May 24, 2004; May 31, 2004; *San Antonio Express News*.	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283–3966.	Aug. 30, 2004	480045
Bexas (Case No.: 04–06–031P) (FEMA Docket No. P–7636).	City of San Antonio.	May 24, 2004; May 31, 2004; *San Antonio Express News*.	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283–3966.	June 30, 2004	480045
Dallas (Case No.: 04–06–566P) (FEMA Docket No. P–7636).	Town of Sunnyvale.	Apr. 14, 2004; Apr. 21, 2004; *Dallas Morning News*.	The Honorable Jim Phaup, Mayor, Town of Sunnyvale, 537 Long Creek Road, Sunnyvale, TX 75182.	Mar. 30, 2004	480188
Tarrant (Case No.: 03–06–2529P) (FEMA Docket No. P–7636).	City of White Settlement.	June 3, 2004; June 10, 2004; *White Settlement Bomber News*.	The Honorable James O. Ouzts, Mayor, City of White Settlement, 214 Meadow Park Drive, White Settlement, TX 76108.	May 14, 2004	480617

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 11, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 05–1000 Filed 1–18–05; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 70, No. 12
Wednesday, January 19, 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.

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 612, 614, 615, 618, 619, 620, and 630

RIN 3052–AC19

Organization; Standards of Conduct; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Definitions; Disclosure to Shareholders; Disclosure to Investors in Systemwide and Consolidated Bank Debt Obligations of the Farm Credit System

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) is proposing to amend our regulations affecting the governance of the Farm Credit System. The proposed rule does not affect the governance of the Federal Agricultural Mortgage Corporation. The proposed rule provides guidance on director qualifications; requires Farm Credit System institution boards of directors to complete training on corporate governance topics and conduct evaluations of their own performance; and addresses the number, selection, terms of service, and removal of outside directors. The proposed rule also addresses board committees, providing requirements for nominating committees, establishing compensation committees, and extending audit committee requirements to all Farm Credit System institutions. Finally, the proposed rule clarifies and expands the current rule on disclosure of conflicts of interest and compensation.

DATES: You may send comments on or before March 21, 2005.

ADDRESSES: Comments may be sent by electronic mail to *reg-comm@fca.gov*, through the Pending Regulations section of our Web site at *www.fca.gov*, or through the Government-wide *www.regulations.gov* portal. You may also send written comments to S. Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or by facsimile transmission to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov*. Once you are in the Web site, select ''Legal Info,'' and then select ''Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove electronic-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:
Robert R. Andros, Senior Economist, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434,
or
Laura D. McFarland, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this proposed rule are to:

- Strengthen the safety and soundness of Farm Credit System institutions;
- Strengthen the independence of Farm Credit System institution boards;
- Incorporate many of the best corporate governance practices for Farm Credit System institutions; and
- Improve disclosures to stockholders and investors in the Farm Credit System.

II. Background

The Farm Credit Act of 1971, as amended (Act),[1] authorizes FCA to issue regulations implementing the provisions of the Act. FCA regulations ensure the safe and sound operations of Farm Credit System institutions and govern disclosure of financial information to stockholders and investors in the Farm Credit System.[2] Congress explained in section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act)[3] that disclosure of financial information and reporting of potential conflicts of interest by Farm Credit System directors, officers, and employees helps ensure the financial viability of the Farm Credit System. In the 1992 Act, Congress required that we review our regulations to ensure that Farm Credit System institutions provide adequate disclosures to stockholders and other interested parties. We completed this review in 1993, making appropriate amendments to our Standards of Conduct regulation (59 FR 24889, May 13, 1994) and Disclosure to Stockholders regulation (59 FR 37406, July 22, 1994). In keeping with today's business environment and the findings of Congress under the 1992 Act, we believe it is prudent and timely to update our regulatory guidance on corporate governance.

The structure of the Farm Credit System and its individual institutions has undergone significant change as a result of the Agricultural Credit Act of 1987 (1987 Act).[4] Since 1988, Farm Credit banks have transferred their direct lending authority to their affiliated associations, thereby becoming wholesale lenders. Most of the 13 banks for cooperatives (BCs) merged and then, along with the remaining BCs, consolidated with a Farm Credit bank to create an agricultural credit bank. Overall, 37 banks and 377 associations have consolidated into 5 banks and 97 associations, creating fewer, but larger and more sophisticated, institutions.[5] During this same time, agricultural credit associations with subsidiary structures have become the dominant Farm Credit System direct lending structure. The continued growth and increasing complexity of Farm Credit System institutions places additional demands on their boards of directors. Further, the recent troubles of a number of publicly held companies resulting from poor governance practices amplifies the need to ensure Farm Credit System institutions have

[1] Pub. L. 92–181, 85 Stat. 583.

[2] Section 5.17(a)(8) to (10) of the Act. 12 U.S.C. 2001, *et seq.*

[3] Pub. L. 102–552, 106 Stat. 4131.

[4] Pub. L. 100–233, 101 Stat. 1568.

[5] As of September 9, 2004.

qualified boards and transparency in reporting to stockholders and investors.

Public attention on corporate governance issues resulted in a series of investigations, public hearings, and legislative and regulatory changes for public companies. The predominant legislative action was passage of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley).[6] Sarbanes-Oxley establishes stronger reporting requirements and enhanced oversight for publicly held companies by increasing the responsibility and independence of corporate boards. The Securities and Exchange Commission (SEC) issued, and continues to issue, regulations implementing the provisions of Sarbanes-Oxley. Self-regulating organizations (SROs) such as the New York Stock Exchange (NYSE), the American Stock Exchange (AMEX) and the NASDAQ Stock Exchange (NASDAQ) have also issued requirements designed to enhance the accountability and transparency of business operations. Likewise, the Conference Board's Commission on Public Trust and Private Enterprise, the Business Roundtable, and large institutional investors and insurance companies issuing director and officer liability insurance recommended changes to corporate policies and procedures to improve corporate governance.

Although Farm Credit banks and associations are not subject to the governance requirements of Sarbanes-Oxley, we considered its components, the actions of other regulators, and recent governance enhancements by the Farm Credit System when developing this proposed rule. As noted in a Moody's Corporate Governance Assessment in 2003, the Farm Credit System initiated an extensive review of its governance practices, intending to adopt best practices and follow relevant provisions of Sarbanes-Oxley. We have also considered these self-initiated governance enhancements by the Farm Credit System in developing this proposed rule. We also sought to balance regulatory requirements with informal guidance. Regulations ensure an element of consistency, while informal guidance provides flexibility for management to adopt practices suitable to the unique needs of individual Farm Credit System institutions. Our efforts to achieve this balance are reflected in this proposed rule. The proposed rule also gives full consideration to our examination of Farm Credit System institutions and the role examinations play in ensuring safe and sound operations.

The proposed rule considers the current state of the Farm Credit System, the increasingly complex market environment within which it operates, and current best governance practices. Specifically, the proposed rule addresses five governance areas: (1) Director training, experience, and performance, (2) board composition, (3) nominating committees, (4) conflict of interest and compensation disclosures, and (5) audit and compensation committees. This proposed rule will ensure timely and accurate System-wide disclosure in a manner consistent with our regulatory policy.[7]

III. Section-by-Section Analysis

A. Definitions

1. Agent and Entity (§ 612.2130)

The proposed rule amends existing § 612.2130 to clarify that the term ''agent'' applies to current, not past, relationships with Farm Credit System institutions. It also proposes to remove the Farm Credit System institutions exception from the list of business institutions and organizations included in the Standards of Conduct definition of ''entity.'' We believe the interactions between Farm Credit System institutions should be included in the Standards of Conduct reporting requirements, providing complete and full disclosure of potential conflicts of interest. We also propose redesignating paragraph numbers as a conforming change.

2. Outside Director (§§ 611.320, 615.5230, and New § 619.9235)

We propose adding a definition of outside director to the general definitions in part 619. The proposed § 619.9235 would define an outside director as a director elected or appointed by the board and independent of the Farm Credit System. The proposed definition includes agents in the list of ineligible candidates. Currently Farm Credit banks, but not associations, may have agents as outside directors. The proposed definition would remove that option, making requirements between Farm Credit banks and associations consistent.

We propose using the opportunity created by the introduction of the term outside director into the regulations to clarify §§ 611.320(b) and 615.5230(a). We clarify that each voting stockholder's right to elect directors does not include outside directors.

3. Senior Officer (§§ 611.1223, 612.2155, 620.1, and New § 619.9265)

We propose removing the existing definition of senior officer from § 620.1 and adding a definition to part 619 that expands the § 620.1 definition to include policy makers. The proposed § 619.9265 would apply the definition of senior officer to all our regulations, unless otherwise noted. In conformance with this proposed change, we propose removing the § 620.1 definition reference in §§ 611.1223(d)(9) and 612.2155(a).

4. Affiliated Organization (§ 620.1)

We propose amending the definition of an affiliated organization at § 620.1(a) by adding the position of director to the list of positions within an affiliated organization. This change will correct an inadvertent omission in the existing rule.

B. Bank and Association Boards of Directors

1. Director Qualifications and Training (New § 611.210)

The proposed rule adds a new § 611.210, requiring each Farm Credit bank and association to establish standards for evaluating the knowledge and experience of director candidates. Farm Credit bank and association boards are responsible for providing management oversight, planning, and policy direction. In addition, they have certain fiduciary responsibilities to stockholders, which may require some accounting and financial experience. It is important to identify well-qualified directors and strengthen the collective knowledge of each board. Therefore, we propose that Farm Credit System institutions identify specific board member qualifications to enhance the collective knowledge of the board in a variety of areas, such as risk management, agricultural economics, and financial reporting.

The proposed rule requires that new directors receive orientation training within 1 year of assuming a board position and that incumbent directors receive periodic training. We recognize that the Farm Credit System offers some training for directors and seeks increased opportunities for FCA and the Farm Credit System to jointly offer director training. We believe our proposed training requirement will provide these opportunities, as well as improve board performance, facilitate implementation of best governance practices, and promote stockholder confidence. Continuing education and training assists directors in keeping abreast of current issues and

[6] Pub. L. 107–204, July 30, 2002.

[7] FCA Board Policy Statement on Regulatory Philosophy, 59 FR 32189, June 22, 1994.

developments affecting agriculture, banking, and corporate governance. While we propose some training topics, we expect each Farm Credit System institution to add others that fit its needs and circumstances.

The rule does not propose requiring Farm Credit bank and association boards be culturally diverse, but we believe each board should be representative of its current and potential borrowers. We believe a board should reflect the age, race, gender, and other cultural factors of producers within its territory. As such, we encourage Farm Credit System institutions to consider diversity when conducting director recruitment.

2. Board Evaluations (§§ 615.5200 and 618.8440)

We propose adding a director evaluation requirement to §§ 615.5200 and 618.8440. We believe each board needs a systematic approach for evaluating its performance. Annual board performance evaluations are acknowledged as a best governance practice and have been endorsed by the NYSE, prominent trade groups, consulting firms, and leading schools of management. As such, we are proposing amendments to §§ 615.5200(b) and 618.8440(b) to require that every Farm Credit System institution board of directors conduct an annual evaluation of its performance as part of the 3-year operational and strategic business plan (3-year business plan). Our proposal leaves the method of conducting this evaluation to the board's discretion. Whatever method is selected, the goal of this evaluation is to help the board identify its strengths and weaknesses.

In proposing this requirement, we recognize that we currently monitor director performance through our examination process. Section EM–510 of the FCA Examination Manual requires our examiners to assist each Farm Credit System institution board in understanding our view of a director's role and responsibilities through an evaluation of a board's effectiveness in achieving safe and sound operations and operating within applicable law and regulations. We will continue to offer this assessment during examinations, but believe its usefulness would be increased if each Farm Credit System institution board also conducted a similar evaluation.

A companion to board evaluations is a Code of Ethics. A written Code of Ethics is intended to reasonably assure customers that a business offers services in an objective and impartial manner. Section 406 of Sarbanes-Oxley encourages companies to adopt a Code of Ethics and the SEC, to implement section 406, requires publicly traded companies to disclose if they have a Code of Ethics or the reason why no code has been adopted. This rule does not propose requiring Farm Credit bank and association boards to adopt a Code of Ethics. We believe the proposed enhancements to our regulations offer sufficient assurances to customers that the Farm Credit System functions in a fair manner. However, we are encouraging each board to follow the current best practice of establishing a Code of Ethics for itself, management and employees. We believe a voluntary action by the individual institutions to adopt and publish a Code of Ethics will increase stockholder and investor goodwill and confidence.

3. Outside Directors (New § 611.220)

The proposed rule adds a new § 611.220 addressing outside director expertise, number, terms of service, and removal.

a. *Expertise and Number.* The Act requires each Farm Credit bank and association board to have at least one director who is independent of the Farm Credit System and elected or appointed by stockholder-elected board members. The legislative history of the Act explains that Congress intended the outside director to provide an independent perspective and some expertise in appropriate areas. We believe the current business environment requires financial expertise within each board of directors and are proposing that all Farm Credit banks and associations have at least one outside director who is a financial expert.[8] This outside director will broaden the board's collective knowledge, enhance its independence, and improve its ability to carry out its fiduciary responsibilities on behalf of Farm Credit System stockholders and investors. We define financial expertise to include education or experience in accounting, internal accounting controls, and preparing or reviewing financial statements for financial institutions or large corporations. We relied on Sarbanes-Oxley when defining financial expertise, which was also used as a basis for the Office of the Comptroller of the Currency (OCC) governance rules for national banks and the proposed amendments to the Office of Federal Housing Enterprise Oversight (OFHEO) rules.

The proposed rule would further require Farm Credit banks and associations with total assets of more than $150 million to have at least two outside directors. We feel the growth in individual institution asset size, the increasing complexity in the financial services sector and related operating risk exposure, as well as the increasing scrutiny of Government-sponsored enterprises justify our proposal. We propose exempting Farm Credit System institutions with total assets of $150 million or less because we believe these institutions are generally less complex and pose less risk. Although we propose exempting these smaller institutions, we are not precluding them from having more than one outside director. However, shareholder-elected directors must remain the majority presence on a board.

We note that in today's business climate, outside directors provide a valuable independent voice of experience to Farm Credit System institutions facing a changing business environment. As such, we believe outside directors should not be discouraged from serving in leadership positions on the board. We further encourage Farm Credit System institutions to select board leaders and committee members based on their qualifications and not on the manner of their selection to the board.

b. *Terms of Service and Removal.* We propose that outside directors have the same terms of office as directors elected by all voting stockholders. We believe that a similar term for all directors is consistent with best governance practices and current Farm Credit System practices. We also propose that outside directors only be removed for cause or a change in eligibility status. Although the removal of outside directors is currently governed by Farm Credit System institution bylaws, we believe regulating removal improves Farm Credit System institution governance, provides better System-wide accountability, and enhances safety and soundness operations.

We consider ''cause'' to include a breach of fiduciary duties, willful or criminal misconduct, and creating a risk to the Farm Credit System institution. Removal for cause does not include offering opposing viewpoints during board deliberations, identifying weaknesses in the institution's operations, or exercising appropriate authorities while serving on a committee of the board. We believe permitting removal for other than a causal basis may have a chilling effect on the outside director's independence, inhibiting the outside director's willingness to take controversial positions while serving on the board.

[8] Section 4.9 of the Act requires the Federal Farm Credit Banks Funding Corporation to have two expert outside directors. 12 U.S.C. 2160(d)(1)(C)(ii).

Further, we are proposing that outside director removal for cause be achieved only with a majority vote of all voting stockholders. Our proposal follows our past practice of encouraging stockholder consent when removing an outside director from office and recognizes the cooperative principles of the Farm Credit System structure.

We are also proposing regulations requiring the removal of an outside director when the director no longer meets the definition of an outside director. The Act requires outside directors to have no affiliation with the Farm Credit System, and as such, they should not acquire any prohibited relation with the Farm Credit System while serving as an outside director. We recognize that an anomaly in the Act permits Farm Credit bank and association outside directors to serve as the Federal Farm Credit Banks Funding Corporation's (Funding Corporation) outside directors, thereby becoming ineligible to continue as the underlying bank or association outside director.[9] We believe the proposed rule remedies this situation. Although we are proposing that an outside director be removed from the position of outside director if he or she acquires prohibited affiliations with the Farm Credit System, we are not restricting a Farm Credit System institution from converting that director to the proposed board-selected inside director.

4. Board-Selected Inside Directors (New § 611.230)

We strongly believe that stockholders have the right to vote for directors, except in limited situations.

Our proposed rule adds a new § 611.230 permitting no more than two board-selected inside director positions, subject to the majority consent of all voting stockholders of a Farm Credit System institution. We believe allowing a bylaw provision authorizing Farm Credit bank and association boards of directors to elect or appoint stockholder-directors does not adversely impact corporate democracy or a bank or association's status as a cooperative, provided the stockholders have agreed to implement this through the institution's bylaws to create the position. In further preservation of cooperative principles, we are proposing a ''cooling off'' period, preventing selection of anyone who was a candidate in the past 5 years for a stockholder-elected position. We believe permitting board-selected inside directors may serve as a tool for boards to achieve diversity or acquire needed skills. However, we are limiting the number of board-selected inside directors to preserve the cooperative principles of the Farm Credit System. In addition, shareholder-elected directors must constitute the majority of a board. We note that the board-selected inside director may run for election at the next available opportunity.

We are also proposing clarifying amendments addressing this unique director position in §§ 611.320 and 615.5230.

C. Election of Directors

1. Director Candidate Campaign Material (§§ 611.320 and 618.8310)

The proposed rule amends § 618.8310 to clarify that Farm Credit System institutions may provide a list of stockholders to other stockholders in relation to an election to the board of directors or to the nominating committee. In addition, we have added the distribution of campaign materials in board and nominating committee elections to the permissible purpose list of examples.

In making this clarification, we further propose amending § 618.8310 to prohibit Farm Credit banks and associations from distributing this same campaign material in lieu of providing a list of stockholders. We make this change to reconcile the provisions of § 618.8310 with those of § 611.320, which prohibits a Farm Credit System institution from distributing campaign material. We also clarify § 611.320 to emphasize that Farm Credit System institutions may not distribute director candidate campaign material. The amendments we are proposing to §§ 618.8310 and 611.320 are essential to preserve impartiality in the election of directors, while allowing for candidate communication with stockholders.

We are also proposing a clarifying amendment to § 618.8310(b)(1) to specify that a ''list of stockholders'' consists of each stockholder's name, address, and classes of stock held. This amendment is consistent with our past interpretations and comports with the Model Business Corporation Act.[10] We also clarify that Farm Credit banks and associations may not add conditions to releasing the list, such as indemnification or ''hold-harmless'' agreements, other than those named in section 4.12A of the Act and our regulation. We believe the existing certification provision adequately addresses an institution's legitimate confidentiality concerns.

As a technical change, we propose replacing ''agricultural credit bank, bank for cooperatives, Federal land bank association, production credit association, merged association, or Farm Credit Bank'' in § 618.8310(b)(1) with ''Farm Credit bank or association'' pursuant to the definitions contained in §§ 619.9140 and 619.9050.

2. Director Candidate Disclosure (§§ 615.5230, 620.20, 620.21, 620.30, and 620.31)

We propose consolidating the provisions of subpart F, *Bank Director Disclosure Requirements* (§§ 620.30 and 620.31), with subpart E, *Association Annual Meeting Information Statement* (§§ 620.20 and 620.21) into § 620.21 of subpart E, and renaming subpart E ''Annual Meeting Information Statement (AMIS).'' The proposed change would establish a uniform set of election disclosure guidelines for Farm Credit banks and associations.

Our proposed changes to the AMIS would require associations to include nominee residential and business addresses and for candidates to disclose any family relationships that would be reportable under part 612 if elected to the institution's board. These requirements currently exist for Farm Credit banks. Farm Credit banks would be required to provide an AMIS to stockholders at least 10 days prior to director elections, listing the day, time, and place of the meetings. These changes should encourage further participation of stockholders in Farm Credit bank and association elections, consistent with cooperative principles, and establish a uniform set of election disclosure guidelines. We also propose changing the ''and'' to ''or'' in § 620.21(c)(2), while removing the ''total of'' phrase to provide more information to stockholders on director attendance.

As part of the proposed consolidation, we propose amending § 615.5230 to require that Farm Credit banks report their efforts to locate nominees for director positions in the AMIS.

3. Nominating Committees (New § 611.325)

The proposed rule adds a new § 611.325 on nominating committees. After reviewing surveys on the practices in many Farm Credit System institutions, we decided to propose regulations addressing the duties and composition of nominating committees. Although we issued informal guidance in the past, the Farm Credit System continues to request additional information on permissible nominating committee activities. We believe this

[9] Section 4.9(d)(1)(C)(i) of the Act.

[10] 1984 Model Business Corporation Act, § 7.20 (3rd Ed. 2002).

guidance should be formalized in our regulations.

We are proposing that each Farm Credit bank and association have a nominating committee of at least three members. We believe a minimum of three members is consistent with best governance practices for balancing outreach and diversity against potential committees of one. The proposed rule specifies that committee members may not be director candidates. We propose this restriction because some Farm Credit banks and associations have permitted a stockholder to run for the nominating committee and a directorship position in the same year. We believe requiring committee members to be free from an interest in a directorship at the time of service and selection preserves impartiality.

Our existing rule requires Farm Credit banks and associations to assure a choice of at least two nominees for each elected office or document why there are not two nominees. Currently, only associations are required to disclose this documentation to stockholders. We believe that Farm Credit bank disclosure of the efforts to locate two qualified and willing nominees will lead to greater openness in the nomination process, increase the number of candidates, and provide regulatory consistency between Farm Credit banks and associations in director nominations. Therefore, the proposed rule requires Farm Credit bank and association nominating committees to document and maintain a record of their efforts to nominate two or more suitable candidates when only one can be found and for the Farm Credit banks and associations to include the nominating committee's report in the AMIS.

We further propose requiring Farm Credit banks and associations to provide all necessary resources to the nominating committee, including a list of stockholders. We believe these resources are necessary for a nominating committee to conduct an independent and thorough search for, and evaluation of, director candidates.

D. Conflict of Interest and Compensation Disclosure (§ 620.5)

The proposed rule would increase the level of disclosure for potential conflicts of interest and executive compensation. Taken together, these proposed changes will improve the transparency of Farm Credit System institution governance and operation, strengthen its safety and soundness, maintain the cooperative principles upon which the Farm Credit System is based, and improve information flow to stockholders and investors, consistent with the purposes and objectives of the Act.

1. Disclosure of Other Business Interests

The proposed rule would amend § 620.5(h) to require disclosure of director and senior officer business relationships with other business interests. The existing provision only requires directors to disclose those business interests where he or she serves on the board of another entity. We are proposing to expand the coverage of disclosure reporting to include all senior officers. We also propose increasing the level of disclosure to include all business interests where a director or senior officer serves on the board or is employed as a senior officer.

In proposing these changes, we considered the reporting requirements of part 612 and the specific business interests that could create a real or potential conflict of interest. We also looked to the reporting requirements of other regulators. At a minimum, we believe it is essential to disclose the individual's relationships with other Farm Credit System institutions, including the Federal Agricultural Mortgage Corporation. We considered limiting disclosure to lending institutions but ultimately chose to retain the existing disclosure requirement of all other business interests.

2. Disclosure of Compensation

We are proposing to clarify the meaning of compensation in § 620.5(i)(1)(iv) and (i)(2). We are clarifying that compensation for serving as a Farm Credit System institution director or senior officer includes both cash and noncash compensation from all sources. For example, if a senior officer attends an out-of-town meeting in his or her Farm Credit System official capacity, any expenses paid by a third party would be reportable.

a. *Director Noncash Compensation.* We are proposing that all noncash compensation be disclosed. Existing § 620.5(i)(1) excludes the reporting of noncash compensation that does not exceed 10 percent of total compensation. We believe tying a disclosure provision to a percentage of compensation results in a disparity of reporting. For example, a director in association A may have compensation of $30,000, reporting noncash compensation that exceeds $3,000. Conversely, a director in association B may have compensation of $300,000 and only have to report noncash compensation that exceeds $30,000. We also propose reporting any special compensation for serving on a board committee.

b. *Senior Officer Compensation.* The proposed rule would amend § 620.5(i)(2) to expand the current compensation disclosure requirement for senior officers of Farm Credit banks and associations. Our existing regulation provides for disclosure by Farm Credit System institutions of compensation to senior officers on an aggregated basis subject to certain limits. We are proposing that senior officer cash and noncash compensation be individually disclosed.

We believe that the interests of Farm Credit System stockholders and investors require full disclosure, as evidenced by congressional statements on disclosure in the 1992 Act. Further, it is generally considered a best practice to publicly disclose executive compensation (both cash and noncash) on an individual basis. We further clarify in the proposed rule that noncash compensation includes stock and stock options. The proposed rule also removes the option for associations to disclose senior officer compensation in the AMIS as an alternative to the annual report. Farm Credit banks do not currently have this option; therefore, we are removing the option for the associations in order to improve disclosure to stockholders and provide consistency in reporting requirements.

As a conforming change, we propose removing the provision at § 620.5(i)(2), which provides for the disclosure of individual senior officer compensation when requested.

c. *CEO Compensation Threshold.* We propose removing the reporting exclusion for Chief Executive Officer (CEO) salaries below $150,000, as adjusted for the Consumer Price Index. We reviewed the existing CEO disclosure requirement and the associated limit of that disclosure. Our review found no basis for retaining the $150,000 minimum reporting limit. Further, in the course of our review, we noted that the SEC and OCC require CEO compensation disclosure regardless of the amount. In light of the stockholders' right to know and the events leading up to the passage of Sarbanes-Oxley, we believe the existing provision can no longer be supported. Therefore, we propose that every Farm Credit System institution report the full amount of CEO compensation.

d. *Senior Officer Perquisites.* The existing rule at § 620.5(i)(2) requires reporting perquisites over $25,000 or 10 percent of a senior officer's salary. The proposed rule would reduce this amount to $5,000. The reduced amount is the same as the reportable loan

transaction threshold at § 620.5(k). Perquisites, by their nature, are nominal privileges and benefits. However, amounts of $25,000 are not nominal. As such, we believe the same disclosure level for loan transactions is a reasonable level.

E. Audit and Compensation Committees

1. Audit Committees (§§ 620.30 and 630.6)

An audit committee is the guardian of a corporation's financial integrity. The events outside of the Farm Credit System involving alleged misdeeds by corporate executives and independent auditors damaged stockholder confidence in the financial markets. These events highlight the need for strong, competent, and vigilant audit committees. As such, we believe it is important for all Farm Credit System institutions to have audit committees. Therefore, we are proposing that each Farm Credit System association have an audit committee. Currently, the Funding Corporation and Farm Credit banks are the only Farm Credit System institutions required to have audit committees under § 630.6.

In conjunction with the proposed expansion, we propose moving the Farm Credit bank audit committee provisions from § 630.6(b) to § 620.30 for organizational purposes and adding a requirement for association audit committees to § 620.30. This section and § 620.31 currently contain provisions on Farm Credit bank disclosure statements. As discussed earlier, we propose consolidating Farm Credit bank disclosures with association disclosure in § 620.21.

We are also proposing changes in the structure, responsibilities, and authority of audit committees. Audit committees recommend actions needed to ensure full and accurate disclosure of an institution's operations and financial well being. We believe an audit committee must be comprised of at least three well-qualified board members. This view is shared by Sarbanes-Oxley, which also requires audit committees to be composed of directors. Therefore, the proposed rule requires each audit committee to be composed solely of board members, including at least one outside director.

Audit committee independence is essential to stockholder confidence in the transparency of audited financial statements and the integrity of the audit committee. By effectively carrying out its responsibilities, an independent audit committee helps to ensure that management properly develops and adheres to a sound system of internal controls, that procedures are in place to objectively assess management's practices, and that the outside auditors objectively assess the institution's financial reporting practices. In furtherance of these objectives, we propose that a director with financial expertise serve on the audit committee as its chair.

We are also proposing that audit committees approve the engagement or discharge of an institution's outside auditor. We believe it is appropriate that the audit committee hire the outside auditor to minimize potential or perceived undue management influence in the review of financial reports and accounting procedures. The audit committee's oversight will provide auditors with a knowledgeable authority other than management with which to discuss controversial matters.

We propose authorizing each audit committee to hire experts and legal counsel, when necessary. Access to outside experts and legal counsel provides an independent source of information or advice. Other resources are also to be made available and, as part of the proposed rule, we require a supermajority board vote to deny resources to an audit committee. We propose requiring this level of control to increase the independence of the audit committee and to act as a check on both the audit committee and management expectations for the Farm Credit System institution's financial resources. The proposed rule would also add a 3-year recordkeeping requirement similar to the voting record retention timeframe contained in § 611.340.

In conjunction with the enhanced role of audit committees, we are proposing to amend §§ 618.8430, 620.5(m), 620.11(d) and (e), 630.20(l), and 630.40(d) to include a reference to the oversight responsibility of audit committees.

2. Compensation Committees (§§ 620.31 and 630.6)

The proposed rule would add a requirement that each Farm Credit bank and association have a compensation committee comprised of at least three board members. We also propose that compensation committees have approval authority for senior officer compensation. We are proposing this provision to ensure that senior officer salaries are commensurate with the duties and responsibilities of their positions.

In drafting our proposal, we reviewed the regulations issued by OFHEO, several compensation committee charters of publicly traded companies, and published studies of best governance practices. These emphasized the importance of a well-defined compensation program, a qualified, objective compensation committee to oversee the program, and the importance of transparency in administering the program.

We propose placing compensation committee provisions in § 620.31 for Farm Credit banks and associations and § 630.6(b) for the Funding Corporation.

IV. Miscellaneous

1. Technical Changes (§§ 611.1030, 612.2130, 614.4511, and 630.20)

Our proposed amendments require additional conforming technical changes to other regulatory provisions. We propose removing § 611.1030 as it contains provisions rendered obsolete by the 1988 technical amendments to section 7.1 of the Act and is redundant of statutory language. We also propose amending § 612.2130(d) to remove the definition of ''director'' because it is unnecessary, resulting in redesignated paragraphs. We propose removing § 614.4511 as it has been rendered obsolete. We also propose changing the management reference in § 630.20 to ''senior officer'' for consistency. The change to § 630.20 would include incorporating the proposed changes of § 620.5(i) regarding senior officer disclosures.

2. Bank Director Compensation (§ 611.400)

We recognize that the proposed rule may increase the responsibilities of some Farm Credit System directors, such as those serving on board committees. We further appreciate that some Farm Credit banks have reported director recruitment difficulties, due in part to the statutory compensation limit for Farm Credit bank directors. In addition, prior to this rulemaking we received several requests from Farm Credit banks to revise our rules on director compensation waivers.

The Act at section 4.21 establishes the compensation for Farm Credit bank directors at $20,000, adjusted annually to reflect changes in the Consumer Price Index. The Act, however, gives FCA the authority to waive this compensation level under exceptional circumstances. Use of the waiver authority is designed to provide a higher level of compensation for the duration of the exceptional circumstances. We have exercised this authority in existing § 611.400, which authorizes Farm Credit banks to pay directors up to 30 percent more than the statutory compensation limit in documented exceptional circumstances and without prior

submission to FCA. Farm Credit banks are required to document the need for the additional compensation before exercising this authority and report its use, and the associated exceptional circumstances, in the annual report to stockholders.

We are inviting comment on whether we should retain, reduce, increase, or remove the current regulatory 30-percent waiver amount and at what level we should remove the authority of Farm Credit banks to exercise the waiver without prior submission to FCA. We request that comments suggesting an appropriate percentage be accompanied by independent data. We are seeking separate comment on what constitutes an appropriate exceptional circumstance. Example of exceptional circumstances might include taking a leadership role on the board or one of its committees, serving as a recognized financial expert, or addressing one-time unusual bank business, such as a merger. In addition, we would like to receive comments identifying objective criteria. The criteria should address the special knowledge, skills, and abilities required by the exceptional circumstances.

3. Implementation Date

We recognize that some Farm Credit System institutions may have to recruit outside directors who have financial expertise or hire an additional outside director to satisfy certain provisions of the proposed rule. Therefore, we are proposing a 1-year delay in the implementation of these two requirements, beginning after publication of the final rule. Full compliance with all other provisions must be achieved beginning on the day following the effective date of the final rule.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 612

Agriculture, Banks, banking, Conflict of interests, Crime, Investigations, Rural areas.

12 CFR Part 614

Agriculture, Banks, banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

12 CFR Part 619

Agriculture, Banks, banking, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 630

Accounting, Agriculture, Banks, banking, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 611, 612, 614, 615, 618, 619, 620, and 630 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 is amended to read as follows:

Authority: Secs. 1.3, 1.4, 1.13, 2.0, 2.1, 2.10, 2.11, 3.0, 3.2, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 6.9, 6.26, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2013, 2021, 2071, 2072, 2091, 2092, 2121, 2123, 2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2278a–9, 2278b–6, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

2. Add a new subpart B, consisting of §§ 611.210, 611.220, and 611.230, to read as follows:

Subpart B—Bank and Association Board of Directors

Sec.
611.210 Director qualifications and training.
611.220 Outside directors.
611.230 Board-selected inside directors.

Subpart B—Bank and Association Board of Directors

§ 611.210 Director qualifications and training.

(a) Each bank and association must establish standards for director candidates that consider the knowledge and experience of individual candidates in risk management, agricultural economics, financial reporting, agricultural production and marketing, or other appropriate areas.

(b) At a minimum, banks and associations must require newly elected or appointed directors to complete director orientation training within 1 year of assuming their position and require incumbent directors to attend training periodically to advance their skills. Orientation and advanced training courses should address corporate governance, strategic planning, financial reporting, electronic banking, and other areas deemed appropriate by the Farm Credit bank or association.

§ 611.220 Outside directors.

(a) *Eligibility, number and term.* (1) No candidate for an outside director position may be a director, officer, employee, agent, or stockholder of an institution in the Farm Credit System. Farm Credit banks and associations must make a reasonable effort to recruit outside directors possessing a level of financial knowledge, but must have at least one outside director with financial expertise. Financial expertise includes, but is not limited to, education or experience in: accounting, preparing or reviewing financial statements for financial institution or large corporations, or internal accounting controls.

(2) Each bank and association with total assets exceeding $150 million as of January 1 of each year must have no fewer than two outside directors on the board. Banks and associations with $150 million or less in total assets as of January 1 of each year must have one outside director. Nothing in this section prohibits a bank or association board from exceeding the minimum number of outside directors. Stockholder-elected directors must constitute a majority of the board at all times.

(3) Banks and associations may not establish a different term of office for outside directors than that established for directors elected by the majority vote of all voting stockholders.

(b) *Removal.* When the majority of the board determines the removal of an outside director is necessary before the

expiration of the outside director's term, the board must document the reason for removal. Outside directors may only be removed when the director no longer meets the definition of an outside director or for cause. Removal for cause includes, but is not limited to, risk to the institution's operations, breach of fiduciary duties, willful or criminal misconduct, or violations of law. Removal for cause requires a majority vote of all voting stockholders.

§ 611.230 Board-selected inside directors.

A board-selected inside director is a stockholder who has been elected to a Farm Credit bank or association board of directors by the other board members. Board-selected inside directors are not elected by a general or regional vote of all voting stockholders. Board-selected inside directors are not outside directors as defined in part 619 of this chapter.

(a) *Creation of the position.* A Farm Credit bank or association may only establish a board-selected inside director position with the majority consent of all voting stockholders. The position must be established in the bank or association bylaws. The qualifications, training and disclosure requirements of directors elected by voting stockholders apply to board-selected inside directors. Board-selected inside director candidates are not subject to the nominating committee process of § 611.325.

(b) *Eligibility and number.* A board-selected inside director may not be a stockholder in any institution of the Farm Credit System, except the Farm Credit bank or association on whose board he or she will serve. No board-selected inside director may have been a candidate for a stockholder-elected director position in the Farm Credit bank or association in the 5 years prior to accepting the board-selected inside director position. No Farm Credit bank or association may have more than two board-selected inside directors serving on the board at any one time. Stockholder-elected directors must constitute a majority of the board at all times.

(c) *Duration of term.* The term of office for board-selected inside directors must be the same as for directors elected by the majority vote of all voting shareholders.

Subpart C—Election of Directors and Other Voting Procedures

3. Amend § 611.320 by revising paragraphs (b) and (e) to read as follows:

§ 611.320 Impartiality in the election of directors.

* * * * *

(b) No employee or agent of a Farm Credit institution shall take any part, directly or indirectly, in the nomination or election of members to the board of directors of a Farm Credit institution, or make any statement, either orally or in writing, which may be construed as intended to influence any vote in such nominations, or elections. This paragraph shall not prohibit employees or agents from providing biographical and other similar information or engaging in other activities pursuant to policies and procedures for nominations and elections. This paragraph does not affect the right of an employee or agent to nominate or vote for shareholder-elected directors of an institution in which the employee or agent is a voting member.

* * * * *

(e) No Farm Credit institution may in any way distribute or mail, whether at the expense of the institution or another, any campaign materials for director candidates. Institutions may request biographical, as well as the disclosure information required under § 620.21(d) of this chapter, from all declared candidates who certify that they are eligible, restate such information in a standard format, and distribute or mail it with ballots or proxy ballots.

4. Add a new § 611.325 to read as follows:

§ 611.325 Bank and association nominating committees.

Nominating committees must conduct themselves in the impartial manner prescribed by the policies and procedures adopted by their institution under § 611.320.

(a) *Composition.* The voting stockholders of each bank and association must elect at their annual meeting a nominating committee of no fewer than three members who will serve for the following year. No individual may serve on a nominating committee who, at the time of selection to a nominating committee, is an employee, director, or agent of that bank or association. A nominating committee member may not be a candidate for election to the board in the same election for which the committee is identifying nominees.

(b) *Responsibilities.* It is the responsibility of each nominating committee to identify, evaluate, and nominate candidates for stockholder election to a bank or association board of directors.

(1) Each nominating committee must seek individuals whom the committee determines meet the eligibility requirements to run for director positions. The committee must endeavor to assure representation from all areas of the institution's territory and as nearly as possible all types of agriculture practiced within the territory.

(2) The nominating committee must perform an independent critical evaluation of the qualifications and suitability of the director candidates. The evaluation process must consider whether each candidate has a level of training and experience to perform the duties required by the position and whether there are any known obstacles that would prevent a candidate from performing the duties of the position.

(3) Each committee must nominate at least two candidates for each director position being voted on by stockholders. If two nominees cannot be identified, the nominating committee must provide written explanation to the existing board of the efforts to locate candidates or the reasons for disqualifying any other candidate that resulted in fewer than two nominees.

(c) *Resources.* Bank and association bylaws must provide that nominating committees have reasonable access to administrative resources in order to perform the nominating committee duties. Each bank and association must, at a minimum, provide their nominating committees with a current list of stockholders, the most recent bylaws, and a copy of the policies and procedures that the bank or the association has adopted pursuant to § 611.320(a) to assure impartial elections. On the request of the nominating committee, the bank or association must also provide a copy of the current operational and strategic business plan prepared pursuant to § 618.8440 of this chapter, including the board self-evaluation. The bank or association may require a pledge of confidentiality by committee members prior to releasing business plan or evaluation documents.

Subpart F—Bank Mergers, Consolidations and Charter Amendments

§ 611.1030 [Removed and reserved]

5. Remove and reserve § 611.1030.

Subpart P—Termination of System Institution Status

6. Amend § 611.1223 by revising paragraph (d)(9) to read as follows:

§ 611.1223 Information statement—contents.

* * * * *

(d) * * *

(9) *Employment, retirement, and severance agreements.* Describe any employment agreement or arrangement between the successor institution and any of your senior officers or directors. Describe any severance and retirement plans that cover your employees or directors and state the costs you expect to incur under the plans in connection with the termination.

* * * * *

PART 612—STANDARDS OF CONDUCT AND REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS

7. The authority citation for part 612 continues to read as follows:

Authority: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

Subpart A—Standards of Conduct

8. Amend § 612.2130 as follows:

a. Add the word ''currently'' after the word ''who'' each time it appears in paragraph (a);

b. Remove paragraph (d);

c. Redesignate existing paragraphs (e) through (u) as paragraphs (d) through (t), consecutively; and

d. Revise newly designated paragraph (e) to read as follows:

§ 612.2130 Definitions.

* * * * *

(e) *Entity* means a corporation, company, association, firm, joint venture, partnership (general or limited), society, joint stock company, trust (business or otherwise), fund, or other organization or institution.

* * * * *

9. Amend § 612.2155 by revising paragraph (a) introductory text to read as follows:

§ 612.2155 Employee reporting.

(a) Annually, as of the institution's fiscal yearend, and at such other times as may be required to comply with paragraph (c) of this section, each senior officer must file a written and signed statement with the Standards of Conduct Official that fully discloses:

* * * * *

PART 614—LOAN POLICIES AND OPERATIONS

10. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart N—Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal

§ 614.4511 [Removed and reserved]

11. Remove and reserve § 614.4511.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

12. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10,1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart H—Capital Adequacy

13. Amend § 615.5200 by revising paragraph (b)(1) to read as follows:

§ 615.5200 General.

* * * * *

(b) * * *

(1) Capability of management and the board of directors;

* * * * *

Subpart I—Issuance of Equities

14. Amend § 615.5230 by revising paragraphs (a)(1) introductory text, (a)(1)(ii), (a)(2) introductory text, (a)(2)(ii), (a)(3) introductory text, and (b)(5) to read as follows:

§ 615.5230 Implementation of cooperative principles.

(a) * * *

(1) Each voting shareholder of an association or bank for cooperatives must:

(i) * * *

(ii) Have the right to vote in the election of each director, except outside directors, unless the regional election of directors is provided for in the bylaws pursuant to § 615.5230(a)(3) or the bylaws provide for the board selection of an inside director pursuant to § 611.230 of this chapter;

* * * * *

(2) Each voting shareholder of a Farm Credit Bank must:

(i) * * *

(ii) Have the right to vote in the election of each director, except outside directors and board-selected inside directors, and be allowed to cumulate such votes and distribute them among the candidates in the shareholder's discretion, except that cumulative voting for the directors may be eliminated if 75 percent of the associations that are shareholders of the Farm Credit Bank vote in favor of elimination. In a vote to eliminate cumulative voting, each association must be accorded one vote.

(3) The regional election of stockholder-elected directors is permitted under the following conditions:

* * * * *

(b) * * *

(5) Each bank must endeavor to assure that there is a choice of at least two nominees for each elective office to be filled and that the board represents as nearly as possible all types of agriculture in the district. If fewer than two nominees for each position are named, the efforts to locate two willing nominees must be documented in the records of the bank and provided as part of the Annual Meeting Information Statement of part 620, subpart E of this chapter. The bank must also maintain a list of the type or types of agriculture engaged in by each director on its board.

PART 618—GENERAL PROVISIONS

15. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

Subpart G—Releasing Information

16. Amend § 618.8310 by revising paragraph (b) to read as follows:

§ 618.8310 Lists of borrowers and stockholders.

* * * * *

(b)(1) Within 7 days after receipt of a written request by a stockholder, each Farm Credit bank or association must provide a current list of its stockholders' names, addresses, and classes of stock held to such requesting stockholder. As a condition to providing the list, the bank or association may only require

that the stockholder agree and certify in writing that the stockholder will:

(i) Utilize the list exclusively for communicating with stockholders for permissible purposes; and

(ii) Not make the list available to any person, other than the stockholder's attorney or accountant, without first obtaining the written consent of the institution.

(2) As an alternative to receiving a list of stockholders, a stockholder may request the institution mail or otherwise furnish to each stockholder a communication for a permissible purpose on behalf of the requesting stockholder. This alternative may be used at the discretion of the requesting stockholder, provided that the requester agrees to defray the reasonable costs of the communication. In the event the requester decides to exercise this option, the institution must provide the requester with a written estimate of the costs of handling and mailing the communication as soon as practicable after receipt of the stockholder's request to furnish a communication. However, a stockholder may not exercise this option when requesting the list to distribute campaign material for election to the institution board or board committees. Farm Credit banks and associations are prohibited from distributing or mailing campaign material under § 611.320(e) of this chapter.

(3) For purposes of this paragraph (b), ''permissible purpose'' is defined to mean matters relating to the business operations of the institutions. This includes matters relating to the effectiveness of management, the use of institution assets, the distribution by stockholder candidates of campaign material for election to the institution board or board committees, and the performance of directors and officers. This does not include communications involving commercial, social, political, or charitable causes, communications relating to the enforcement of a personal claim or the redress of a personal grievance, or proposals advocating that the bank or association violate any Federal, State, or local law or regulation.

Subpart J—Internal Controls

17. Amend § 618.8430 by revising the introductory text and adding a new paragraph (d) to read as follows:

§ 618.8430 Internal controls.

Each Farm Credit institution's board of directors must adopt an internal control policy, providing adequate direction to the institution in establishing effective control over, and accountability for, operations, programs, and resources. The policy must include, at a minimum, the following:

* * * * *

(d) The role of the audit committee in providing oversight and review of the institution's internal controls.

18. Amend § 618.8440 by revising paragraphs (b) introductory text and (b)(2) to read as follows:

§ 618.8440 Planning.

* * * * *

(b) The plan must include, at a minimum, the following:

(1) * * *

(2) An annual review of the internal and external factors likely to affect the institution during the planning period. The review must include:

(i) An assessment of management capabilities;

(ii) A self-evaluation of the board's performance; and

(iii) Strategies for correcting identified weaknesses.

* * * * *

PART 619—DEFINITIONS

19. The authority citation for part 619 is revised to read as follows:

Authority: Secs. 1.4, 1.7, 2.1, 2.4, 2.11, 3.2, 3.21, 4.9, 5.9, 5.12, 5.17, 5.18, 6.22, 7.0, 7.1, 7.6, 7.7, 7.8, 7.12 of the Farm Credit Act (12 U.S.C. 2011, 2015, 2072, 2075, 2092, 2123, 2142, 2160, 2243, 2244, 2252, 2253, 2278b–2, 2279a, 2279a–1, 2279b, 2279b–1, 2279b–2, 2279f).

20. Amend part 619 by adding new §§ 619.9235 and 619.9265, to read as follows:

§ 619.9235 Outside director.

A member of a board of directors selected or appointed by the board, who is not a director, officer, employee, agent, or stockholder of any Farm Credit System institution.

§ 619.9265 Senior officer.

The Chief Executive Officer, the Chief Operations Officer, the Chief Financial Officer, the Chief Credit Officer, and the General Counsel, or persons in similar positions; and any other person responsible for a major policy-making function.

PART 620—DISCLOSURE TO SHAREHOLDERS

21. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11) sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart A—General

22. Amend § 620.1 as follows:

a. Remove paragraph (p);

b. Redesignate existing paragraphs (q) through (s) as paragraphs (p) through (r), consecutively; and

c. Revise paragraph (a).

§ 620.1 Definitions.

* * * * *

(a) *Affiliated organization* means any organization, other than a Farm Credit organization, of which a director, senior officer or nominee for director of the reporting institution is a partner, director, officer, or majority shareholder.

* * * * *

Subpart B—Annual Report to Shareholders

23. Amend § 620.5 as follows:

a. Revise paragraphs (h)(3), (i)(1), (i)(2) and (i)(2)(i) introductory text;

b. Remove paragraph (i)(2)(iii); and

c. Add new paragraph (m)(3).

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(h) * * *

(3) For each director and senior officer, list any other business interest where the director or senior officer serves on the board or as a senior officer. Name the position held and state the principal business in which the business is engaged.

* * * * *

(i) * * *

(1) *Director compensation.* Describe the arrangements under which directors of the institution are compensated for all services as a director (including total cash compensation and noncash compensation) and state the total cash compensation and total value of noncash compensation paid to all directors as a group during the last fiscal year. If applicable, describe any exceptional circumstances justifying the additional director compensation as authorized by § 611.400(c) of this chapter. For each director, state:

(i) The number of days served at board meetings;

(ii) The total number of days served in other official activities, including any board committee(s);

(iii) Any additional compensation paid for service on a board committee, naming the committee; and

(iv) The total cash and noncash compensation paid to each director during the last fiscal year. Compensation reported must include the amount of cash, or value of noncash items, provided by anyone to a director for services rendered by the director on behalf of the reporting Farm Credit institution.

(2) *Senior officer compensation.* Disclose the information on senior officer compensation and compensation plans as required by this paragraph. Compensation reported must include the amount of cash and the value of noncash items provided by anyone to a senior officer for services rendered by the senior officer on behalf of the reporting Farm Credit institution.

(i) The institution must disclose the total amount of cash and noncash compensation, including stock and stock options, paid to each senior officer in substantially the same manner as the tabular form specified in the following Summary Compensation Table (table):

SUMMARY COMPENSATION TABLE

	Annual					
Name, position of senior officer (a)	Year (b)	Salary (c)	Bonus (d)	Deferred/ perquisite (e)	Other (f)	Total (g)
(X), CEO	20XX					
	20XX					
	20XX					
(X)	20XX					
	20XX					
	20XX					
(X)	20XX					
	20XX					
	20XX					
(X)	20XX					
	20XX					
	20XX					

(A) Report the total amount of cash and noncash compensation paid and the amount of each component of compensation paid to the institution's chief executive officer (CEO) and each senior officer for each of the last 3 completed fiscal years, naming the individuals. If more than one person served in the capacity of CEO during any given fiscal year, individual compensation disclosures must be provided for each CEO.

(B) Amounts shown as ''Salary'' (column (c)) and ''Bonus'' (column (d)) must reflect the dollar value of salary and bonus earned by the senior officer during the fiscal year. Amounts contributed during the fiscal year by the senior officer pursuant to a plan established under section 401(k) of the Internal Revenue Code, or similar plan, must be included in the salary column or bonus column, as appropriate. If the amount of salary or bonus earned during the fiscal year is not calculable by the time the report is prepared, the reporting institution must provide its best estimate of the compensation amount(s) and disclose that fact in a footnote to the table.

(C) Amounts shown as ''deferred/perquisites'' (column (e)) must reflect the dollar value of other annual compensation not properly categorized as salary or bonus, including but not limited to:

(*1*) Deferred compensation earned during the fiscal year, whether or not paid in cash; or

(*2*) Perquisites and other personal benefits, unless the aggregate value of such compensation is less than $5,000.

(D) Compensation amounts reported under the category ''Other'' (column (f)) shall reflect the dollar value of all other compensation not properly reportable in any other column. Items reported in this column shall be specifically identified and described in a footnote to the table. Such compensation includes, but is not limited to:

(*1*) The amount paid to the senior officer pursuant to a plan or arrangement in connection with the resignation, retirement, or termination of such officer's employment with the institution; or

(*2*) The amount of contributions by the institution on behalf of the senior officer to a vested or unvested defined contribution plan unless the plan is made available to all employees on the same basis.

(E) Amounts displayed under ''Total'' (column (g)) shall reflect the sum total of amounts reported in columns (c), (d), (e), and (f).

* * * * *

(m) * * *

(3) State that the financial statements were prepared under the oversight of the audit committee, identifying the members of the audit committee.

* * * * *

Subpart C—Quarterly Report

24. Amend § 620.11 by adding a new paragraph (d)(5) and revising paragraphs (d) introductory text and (e) to read as follows:

§ 620.11 Content of quarterly report to shareholders.

* * * * *

(d) *Financial statements.* The following financial statements must be provided:

* * * * *

(5) State that the financial statements were prepared under the oversight of the audit committee.

(e) *Review by independent public accountant.* The interim financial information need not be audited or reviewed by an independent public accountant prior to filing. If, however, a review of the data is made in accordance with the established professional standards and procedures for such a review, the institution may state that the independent accountant has performed such a review under the supervision of the institution's audit committee. If such a statement is made, the report of the independent accountant on such review must accompany the interim financial information.

* * * * *

Subpart E—Annual Meeting Information Statement

25. Revise the heading of subpart E to read as set forth above.

§ 620.20 [Removed and reserved]

26. Remove and reserve § 620.20.

27. Amend § 620.21 by revising the introductory paragraph, paragraphs (c)(2) and (d) to read as follows:

§ 620.21 Contents of the information statement and other information to be furnished in connection with the annual meeting.

Each bank or association of the Farm Credit System must provide an information statement (''statement'' or ''AMIS'') to its stockholders at least 10 days prior to any meeting at which directors are to be elected. The AMIS must reference the annual report required by subpart B of this part and such other material information as is necessary to make the required statement, in light of the circumstances under which it is made, not misleading. The AMIS must address the following items:

* * * * *

(c) * * *

(2) State the name of any incumbent director who attended fewer than 75 percent of the board meetings or any meetings of board committees on which he or she served during the last fiscal year.

* * * * *

(d) *Nominees.* (1) For each nominee, state the nominee's name, residential address, business address if any, age, and business experience during the last 5 years, including each nominee's principal occupation and employment during the last 5 years. List all business interests on whose board of directors the nominee serves or is otherwise employed in a position of authority, and state the principal business in which the business interest is engaged. Identify any family relationship of the nominee that would be reportable under part 612 of this chapter if elected to the institution's board.

(2) If fewer than two nominees for each position are named, describe the efforts of the nominating committee to locate two willing nominees.

(3) State that nominations shall be accepted from the floor.

(4) For each nominee who is not an incumbent director, except a nominee from the floor, provide the information referred to in § 620.5(j) and (k) and paragraph (d)(1) of this section. If stockholders will vote by paper mail or electronic mail ballot upon conclusion of all sessions, each floor nominee must provide the information referred to in § 620.5(j) and (k) and paragraph (d)(1) of this section in paper or electronic form to the Farm Credit institution within the time period prescribed by the institution's bylaws. If the institution's bylaws do not prescribe a time period, state that each floor nominee must provide the disclosure to the institution within 5 business days of the nomination. The institution must ensure that the information is provided to the voting stockholders by delivering the ballots for the election of directors in the same format as the comparable information contained in the annual meeting information statement. If stockholders will not vote by paper mail or electronic mail ballot upon conclusion of all sessions, each floor nominee must provide the information referred to in § 620.5(j) and (k) and paragraph (d)(1) of this section in paper or electronic form at the first session at which voting is held.

(5) If association directors are nominated or elected by region, describe the regions and state the number of voting stockholders entitled to vote in each region. Any association director nominee from the floor must be an eligible candidate for the association director position for which the person has been nominated.

(i) If association directors are not elected by region, the following must apply:

(A) If the annual meeting is to be held in more than one session and paper mail or electronic mail balloting will be conducted upon the conclusion of all sessions, state that nominations from the floor may be made at any session or, if the association's bylaws so provide, state that nominations from the floor shall be accepted only at the first session.

(B) If stockholders will not vote solely by paper mail or electronic mail ballot upon conclusion of all sessions, state that nominations from the floor may be made only at the first session.

(ii) If association directors are elected by region, the following must apply:

(A) If more than one session of an annual meeting is held in a region, and if paper mail or electronic mail balloting will be conducted at the end of all sessions in a region, state that nominations from the floor may be made at any session in the region or, if the association's bylaws so provide, state that nominations from the floor shall be accepted only at the first session held in the region.

(B) If stockholders will not vote solely by paper mail or electronic mail ballot upon conclusion of all sessions in a region, state that nominations from the floor may be made only at the first session held in the region.

(6) Each bank and association must adopt policies and procedures that assure a disclosure statement is prepared by each director candidate. Copies of completed and signed disclosure statements must be provided to voting stockholders with the election ballots. No person may be a nominee for director who does not make the disclosures required by this subpart.

* * * * *

28. Revise subpart F to read as follows:

Subpart F—Bank and Association Audit and Compensation Committees

Sec.
620.30 Audit committees.
620.31 Compensation committees.

Subpart F—Bank and Association Audit and Compensation Committees

§ 620.30 Audit committees.

Each Farm Credit bank and association must establish and maintain an audit committee. An audit committee is established by adopting a written charter describing the committee's composition, authorities, and responsibilities in accordance with this section. All audit committees must maintain records of meetings, including attendance, for at least 3 fiscal years.

(a) *Composition.* Each member of an audit committee must be a member of the Farm Credit institution's board of directors. An audit committee may not consist of less than three members and at least one member must be an outside director. All audit committee members should be knowledgeable in at least one of the following: public and corporate finance, financial reporting and disclosure, or accounting procedures. The chair of an audit committee must be a financial expert. A financial expert is one who either has experience with internal controls and procedures for financial reporting or experience in preparing or auditing financial statements.

(b) *Independence.* Every audit committee member must be free from any relationship that, in the opinion of the board, would interfere with the exercise of independent judgment as a committee member.

(c) *Resources.* Farm Credit institutions must permit their audit committees to contract for independent legal counsel and expert advisors. Each institution is responsible for providing monetary and nonmonetary resources to enable its audit committee to contract for independent auditors, outside advisors, and ordinary administrative expenses. A two-thirds majority vote of the full board of directors is required to deny an audit committee's request for resources.

(d) *Duties.* Each audit committee must report only to the board of directors. In its capacity as a committee of the board, the audit committee is responsible for the following:

(1) *Financial reports.* Each audit committee must oversee management's preparation of the report to

stockholders; review the impact of any significant accounting and auditing developments; review accounting policy changes relating to preparation of financial statements; and review annual and quarterly reports prior to release. After the audit committee reviews a financial policy, procedure, or report, it must record in its minutes its agreement or disagreement with the item(s) under review.

(2) *Independent (external) auditors.* Each audit committee must determine the appointment, compensation, and retention of independent auditors to issue audit reports of the institution. The audit committee must review the independent auditor's work. The independent auditor reports directly to the audit committee.

(3) *Internal controls.* Each audit committee must oversee the institution's system of internal controls relating to preparation of the report, including controls relating to the institution's compliance with applicable laws and regulations. Any internal audit functions of the institution must also be subject to audit committee review and supervision.

§ 620.31 Compensation committees.

Each Farm Credit bank and association must establish and maintain a compensation committee by adopting a written charter describing the committee's composition, authorities, and responsibilities in accordance with this section. All compensation committees will be required to maintain records of meetings, including attendance, for at least 3 fiscal years.

(a) *Composition.* Each compensation committee must consist of at least three members. Each committee member must be a member of the institution's board of directors. Every member must be free from any relationship that, in the opinion of the board, would interfere with the exercise of independent judgment as a committee member.

(b) *Duties.* Each compensation committee must report only to the board of directors. In its capacity as a committee of the board, the compensation committee is responsible for reviewing the compensation policies and plans for senior officers and employees. Each compensation committee must approve the cash and non-cash compensation of senior officers.

(c) *Resources.* Each institution must provide monetary and nonmonetary resources to enable its compensation committee to function.

PART 630—DISCLOSURE TO INVESTORS IN SYSTEMWIDE AND CONSOLIDATED BANK DEBT OBLIGATIONS OF THE FARM CREDIT SYSTEM

29. The authority citation for part 630 continues to read as follows:

Authority: Secs. 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2252, 2254).

Subpart A—General

30. Revise § 630.6 to read as follows:

§ 630.6 Funding Corporation committees.

(a) *Farm Credit System audit committee.* The Funding Corporation must establish and maintain a Farm Credit System Audit Committee by adopting a written charter describing the committee's composition, authorities, and responsibilities in accordance with this section. The Farm Credit System Audit Committee must maintain records of meetings, including attendance, for at least 3 fiscal years.

(1) *Composition.* Each member of the Farm Credit System Audit Committee must be a member of the Funding Corporation's board of directors. The Farm Credit System Audit Committee may not consist of less than three members and at least one member must be an outside director. All audit committee members should be knowledgeable in at least one of the following: Public and corporate finance, financial reporting and disclosure, or accounting procedures. The chair of an audit committee must be a financial expert. A financial expert is one who either has experience with internal controls and procedures for financial reporting or experience in preparing or auditing financial statements.

(2) *Independence.* Every audit committee member must be free from any relationship that, in the opinion of the board, would interfere with the exercise of independent judgment as a committee member.

(3) *Resources.* The Funding Corporation must permit the Farm Credit System Audit Committee to contract for independent legal counsel and expert advisors. The Funding Corporation is responsible for providing monetary and nonmonetary resources to enable the Farm Credit System Audit Committee to contract for independent auditors, outside advisors, and ordinary administrative expenses. A two-thirds majority vote of the full board of directors is required to deny the Farm Credit System Audit Committee's request for resources.

(4) *Duties.* The Farm Credit System Audit Committee reports only to the board of directors. In its capacity as a committee of the board, the audit committee is responsible for the following:

(i) *Financial reports.* The Farm Credit System Audit Committee must oversee the Funding Corporation management's preparation of the report to stockholders and investors; review the impact of any significant accounting and auditing developments; review accounting policy changes relating to preparation of the System-wide combined financial statements; and review annual and quarterly reports prior to release. After the Farm Credit System Audit Committee reviews a financial policy, procedure, or report, it must record in its minutes its agreement or disagreement with the item(s) under review.

(ii) *Independent (external) auditors.* The Farm Credit System Audit Committee must determine the appointment, compensation, and retention of independent auditors to issue audit reports of the Farm Credit System. The audit committee must review the independent auditor's work. The independent auditor reports directly to the Farm Credit System Audit Committee.

(iii) *Internal controls.* The Farm Credit System Audit Committee must oversee the Funding Corporation's system of internal controls relating to preparation of the report, including controls relating to the Farm Credit System's compliance with applicable laws and regulations. Any internal audit functions of the Funding Corporation must also be subject to the Farm Credit System Audit Committee's review and supervision.

(b) *Compensation committee.* The Funding Corporation must establish and maintain a compensation committee by adopting a written charter describing the committee's composition, authorities, and responsibilities in accordance with this section. The compensation committee will be required to maintain records of meetings, including attendance, for at least 3 fiscal years.

(1) *Composition.* The committee must consist of at least three members. Each committee member must be a member of the Funding Corporation's board of directors. Every member must be free from any relationship that, in the opinion of the board, would interfere with the exercise of independent judgment as a committee member.

(2) *Duties.* The compensation committee must report only to the board of directors. In its capacity as a committee of the board, the compensation committee is responsible for reviewing the compensation policies and plans for senior officers and

employees. Each compensation committee must approve the cash and non-cash compensation of senior officers.

(3) *Resources.* The Funding Corporation must provide monetary and nonmonetary resources to enable its compensation committee to function.

Subpart B—Annual Report to Investors

31. Amend § 630.20 by revising the introductory heading for paragraph (h), paragraphs (h)(2) and (l) introductory text to read as follows:

§ 630.20 Contents of the annual report to investors.

* * * * *

(h) *Directors and senior officers.*

* * * * *

(2) *Senior officers.* List the names of all senior officers employed by the disclosure entities, including position title and length of service at current position.

* * * * *

(l) *Financial statements.* Furnish System-wide combined financial statements and related footnotes prepared in accordance with GAAP, and accompanied by supplemental information prepared in accordance with the requirements of § 630.20(m). The System-wide combined financial statements must provide investors and potential investors in FCS debt obligations with the most meaningful presentation pertaining to the financial condition and results of operations of the Farm Credit System. The System-wide combined financial statement and accompanying supplemental information must be audited in accordance with generally accepted auditing standards by a qualified public accountant (as defined in § 621.2(i) of this chapter) and indicate that the financial statements were prepared under the oversight of the Farm Credit System Audit Committee, identifying the members of this audit committee. The System-wide combined financial statements must include the following:

* * * * *

Subpart C—Quarterly Reports to Investors

32. Amend § 630.40 by revising paragraph (d) introductory text to read as follows:

§ 630.40 Contents of the quarterly report to investors.

* * * * *

(d) *Financial statements.* Interim combined financial statements must be provided in the quarterly report to investors as set forth in paragraphs (d)(1) through (4). Indicate that the financial statements were prepared under the oversight of the Farm Credit System Audit Committee.

* * * * *

Dated: January 12, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–913 Filed 1–18–05; 8:45 am]

BILLING CODE 6705–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF22

Small Business Size Standards; Selected Size Standards Issues

AGENCY: Small Business Administration.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The U.S. Small Business Administration (SBA) is extending the deadline for comments on the Advanced Notice of Proposed Rulemaking (ANPRM), which requested comments on issues related to SBA's effort to restructure its small business size standards, for 60 days because SBA agrees with the public's view that an extension is necessary to afford interested parties more time to thoroughly review the issues described in the ANPRM and prepare their comments. The previous deadline of February 1, 2005 is extended to April 3, 2005.

DATES: Comments must be received on or before April 3, 2005.

ADDRESSES: You may submit comments, identified by RIN 3245–AF22, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *restructure.sizestandards@sba.gov.* Include RIN 3245–AF22 in the subject line of the message.
- Fax: (202) 205–6390.
- Mail: Gary M. Jackson, Assistant Administrator for Size Standards, 409 Third Street, SW., Washington, DC 20416.
- Hand Delivery/Courier: Gary M. Jackson, Assistant Administrator for Size Standards, 409 Third Street, SW., Washington, DC 20416.

Upon receipt of a written request, SBA will make available public comments to the requestor, subject to the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: SBA's Office of Size Standards, (202) 205–6618, or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: On March 19, 2004, SBA published a proposed rule to restructure its small business size standards by establishing them based primarily on the number of employees of a business concern and by limiting to 10 the number of different size standard levels (69 FR 13130). Although a majority of the more than 4,000 comments on the proposed changes expressed support for the proposal, SBA also received a large number of comments opposing various aspects of SBA's approach to simplifying size standards. As a result, SBA withdrew the proposal on July 1, 2004 (69 FR 39874).

On December 3, 2004, SBA published an ANPRM seeking comments from the public on several issues that were raised during the public comment period for the proposed rule (69 FR 70197). Specifically, the ANPRM sought comments on the approach to simplify size standards, the calculation of number of employees (including how SBA defines an employee for size purposes), the use of receipts-based size standards, the designation of size standards for Federal procurements, the establishment of size standards for use solely in Federal procurement programs, the establishment of tiered size standards, the simplification of affiliation regulations, the simplification of small business joint venture eligibility regulations, the grandfathering of small business eligibility, and the impact of SBA size standards on the regulations of other Federal agencies. The deadline for comments on the ANPRM was February 1, 2005.

SBA has received hundreds of comments on these issues. SBA has also received requests from the public for an extension of the comment period to afford interested parties more time to thoroughly review the issues described in the ANPRM and prepare their comments. Given the scope and nature of size standard issues, SBA agrees that it is in the public interest to provide additional time for preparation of comments, which SBA will consider as part of its deliberations on restructuring size standards. Therefore, SBA is extending the comment period for 60 days, from February 1, 2005 to April 3, 2005.

Dated: January 13, 2005.

Allegra F. McCullough,

Associate Deputy Administrator for Government Contracting and Business Development.

[FR Doc. 05–1035 Filed 1–18–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE217; Notice No. 23–05–01–SC]

Special Conditions: AMSAFE, Incorporated; Mooney Models M20K, M20M, M20R, and M20S; Inflatable Three-Point Restraint Safety Belt With an Integrated Airbag Device

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the installation of an AMSAFE, Inc., Inflatable Three-Point Restraint Safety Belt with an Integrated Airbag Device on Mooney models M20K, M20M, M20R, and M20S. These airplanes, as modified by AMSAFE, Inc., will have novel and unusual design features associated with the lap belt portion of the safety belt, which contains an integrated airbag device. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. The proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before February 18, 2005.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration (FAA), Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE217, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE217. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Mark James, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4137, fax 816–329–4090, e-mail *mark.james@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE217.'' The postcard will be date stamped and returned to the commenter.

Background

On April 13, 2004, AMSAFE, Inc., Aviation Inflatable Restraints Division, 1043 North 47th Avenue, Phoenix, AZ 85043, applied for a supplemental type certificate for the installation of an inflatable lap belt restraint with a standard upper torso restraint (or shoulder harness) in Mooney models M20 (K, M, R, and S). The Mooney models M20 (K, M, R, and S) are single-engine, multi-place airplanes.

The inflatable restraint system is a three-point safety belt restraint system consisting of a traditional shoulder harness and an inflatable airbag lap belt. The inflatable portion of the restraint system will rely on sensors to electronically activate the inflator for deployment. The inflatable restraint system will be made available on the pilot, co-pilot, and passenger seats of these airplanes.

In the event of an emergency landing, the airbag will inflate and provide a protective cushion between the occupant's head and structure within the airplane. This will reduce the potential for head and torso injury. The inflatable restraint behaves in a manner that is similar to an automotive airbag, but in this case, the airbag is integrated into the lap belt. While airbags and inflatable restraints are standard in the automotive industry, the use of an inflatable three-point restraint system is novel for general aviation operations.

The FAA has determined that this project will be accomplished on the basis of providing the same level of safety as the current Mooney models M20 (K, M, R, and S). The FAA has two primary safety concerns with the installation of airbags or inflatable restraints:

- That they perform properly under foreseeable operating conditions; and
- That they do not perform in a manner or at such times as to impede the pilot's ability to maintain control of the airplane or constitute a hazard to the airplane or occupants.

The latter point has the potential to be the more rigorous of the requirements. An unexpected deployment while conducting the takeoff or landing phases of flight may result in an unsafe condition. The unexpected deployment may either startle the pilot or generate a force sufficient to cause a sudden movement of the control yoke. Either action could result in a loss of control of the airplane, the consequences of which are magnified due to the low operating altitudes during these phases of flight. The FAA has considered this when establishing these special conditions.

The inflatable restraint system relies on sensors to electronically activate the inflator for deployment. These sensors could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of an inadvertent deployment must be considered in establishing the reliability of the system. AMSAFE, Inc., must show either that the effects of an inadvertent deployment in flight are not a hazard to the airplane or that an inadvertent deployment is extremely improbable. In addition, general aviation aircraft are susceptible to a large amount of cumulative wear and tear on a restraint system. It is likely that the potential for inadvertent deployment increases as a result of this cumulative damage. Therefore, the impact of wear and tear on inadvertent deployment must be considered. Due to the effects of this cumulative damage, a life limit must be established for the appropriate system components in the restraint system design.

There are additional factors to be considered to minimize the chances of inadvertent deployment. General aviation airplanes are exposed to a unique operating environment, since the same airplane may be used by both experienced and student pilots. The effect of this environment on

inadvertent deployment must be understood. Therefore, qualification testing of the firing hardware/software must consider the following:

- The airplane vibration levels appropriate for a general aviation airplane; and
- The inertial loads that result from typical flight or ground maneuvers, including gusts and hard landings.

Any tendency for the firing mechanism to activate as a result of these loads or acceleration levels is unacceptable.

Other influences on inadvertent deployment include high intensity electromagnetic fields (HIRF) and lightning. Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. To comply with HIRF and lightning requirements, the AMSAFE, Inc., inflatable restraint system is considered a critical system, since its inadvertent deployment could have a hazardous effect on the airplane.

Given the level of safety of the current Mooney M20 occupant restraints, the inflatable restraint system must show that it will offer an equivalent level of protection in the event of an emergency landing. In the event of an inadvertent deployment, the restraint must still be at least as strong as a Technical Standard Order approved belt and shoulder harness. There is no requirement for the inflatable portion of the restraint to offer protection during multiple impacts, where more than one impact would require protection.

The inflatable restraint system must deploy and provide protection for each occupant under a crash condition. The seats of the models M20 (K, M, R, and S) are not certificated to the requirements of § 23.562, and it is not known if they would remain in tact following exposure to the crash pulse identified in § 23.562. Therefore, the test crash pulse used to satisfy this requirement may have a peak longitudinal deceleration lower than that required by § 23.562. However, the test pulse onset rate (deceleration divided by time) must be equal to or greater than the onset rate of the pulse described in § 23.562. This will demonstrate that the crash sensor will trigger when exposed to a rapidly applied deceleration, like an actual crash event.

It is possible a wide range of occupants will use the inflatable restraint. Thus, the protection offered by this restraint should be effective for occupants that range from the fifth percentile female to the ninety-fifth percentile male. Energy absorption must be performed in a consistent manner for this occupant range.

In support of this operational capability, there must be a means to verify the integrity of this system before each flight. As an option, AMSAFE, Inc., can establish inspection intervals where they have demonstrated the system to be reliable between these intervals.

It is possible that an inflatable restraint will be ''armed'' even though no occupant is using the seat. While there will be means to verify the integrity of the system before flight, it is also prudent to require that unoccupied seats with active restraints not constitute a hazard to any occupant. This will protect any individual performing maintenance inside the cockpit while the aircraft is on the ground. The restraint must also provide suitable visual warnings that would alert rescue personnel to the presence of an inflatable restraint system.

In addition, the design must prevent the inflatable seatbelt from either being incorrectly buckled or installed such that the airbag would not properly deploy, or both. As an alternative, AMSAFE, Inc., may show that such deployment is not hazardous to the occupant and will still provide the required protection.

The cabins of the Mooney model airplanes identified in these special conditions are confined areas, and the FAA is concerned that noxious gasses may accumulate in the event of airbag deployment. When deployment does occur, either by design or inadvertently, there must not be a release of hazardous quantities of gas or particulate matter into the cockpit.

An inflatable restraint should not increase the risk already associated with fire. Therefore, the inflatable restraint should be protected from the effects of fire so that an additional hazard is not created by, for example, a rupture of the inflator.

Finally, the airbag is likely to have a large volume displacement and possibly impede the egress of an occupant. Since the bag deflates to absorb energy, it is likely that the inflatable restraint would be deflated at the time an occupant would attempt egress. However, it is appropriate to specify a time interval after which the inflatable restraint may not impede rapid egress. Ten seconds has been chosen as reasonable time. This time limit will offer a level of protection throughout the impact event.

Type Certification Basis

Under the provisions of § 21.101, AMSAFE, Inc., must show that the Mooney models M20 (K, M, R, and S), as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. 2A3 or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. 2A3 are as follows:

Mooney M20K:

Model M20K (Serial Number 25–0001 through 25–2012) See Note 21 below (from Type Certificate Data Sheet). Civil Air Regulations (CAR) 3, effective November 1, 1949, as amended to May 18, 1954, with paragraph 3.74 of Amendment 3–13 dated August 25, 1955; CAR 3 effective May 15, 1956, as amended to October 1, 1959, paragraphs 3.109, 3.112, 3.115, 3.118, 3.120, and 3.441; in lieu of corresponding CAR 3 paragraphs, where applicable—14 CFR Part 23, effective February 1, 1965, as amended to September 14, 1969; §§ 23.33, 23.901 through 23.953, §§ 23.955 through 23.963, §§ 23.967 through 23.1047, §§ 23.1121 through 23.1193, §§ 23.1351 through 23.1401, § 23.1527, § 23.1553, as amended to June 17, 1970; §§ 23.1441 through 23.1449, as amended to February 1, 1977; §§ 23.1091 through 23.1105, as amended March 1, 1978; §§ 23.29; 14 CFR part 36, effective September 20, 1976.

Model M20K (Serial Number 25–2013 and on) See Note 21 below (from Type Certificate Data Sheet). Civil Air Regulations (CAR) 3, effective November 1, 1949, as amended to May 18, 1954, with paragraph 3.74 of Amendment 3–13; CAR 3 effective May 15, 1956, as amended to October 1, 1959, paragraphs 3.109, 3.112, 3.115, 3.118, 3.120, and 3.441; in lieu of corresponding CAR 3 paragraphs, where applicable—14 CFR part 23, effective February 1, 1965; § 23.33, §§ 23.901 through 23.953, §§ 23.955 through 23.963, §§ 23.967 through 23.1047, §§ 23.1121 through 23.1193, §§ 23.1351 through 23.1401, § 23.1527, § 23.1553 of amendment 23–7; §§ 23.1441 through 23.1449 of amendment 23–9; §§ 23.1091 through 23.1105 of amendment 23–17; § 23.1301 of amendment 23–20; § 23.29 of amendment 23–21; § 23.1529 of amendment 23–26; §§ 23.45 through 23.77 of amendment 23–34; § 23.1587 of amendment 23–45; §§ 23.1323 and 23.1325 of amendment 23–42; 14 CFR part 36, latest amendment at time of certification.

Note 21: M20K S/N's 25–2000 thru 25–2012 may be retrofitted to TSIO–360–SB2 engine and gross weight increase to 3130 Lbs. when complied with M20K Gross Weight Increase Retrofit Instructions.

Mooney M20M:

Model M20 Civil Air Regulations (CAR) 3, effective November 1, 1949, as amended to May 18, 1954, paragraph 3.74, as amended to August 25, 1955; paragraphs 3.109, 3.112, 3.115, 3.118, 3.120, and 34.441 of CAR 3, effective May 15, 1956, as amended to October 1, 1959. In lieu of corresponding CAR 3 paragraphs, where applicable—14 CFR part 23, effective February 1, 1965; § 23.29, as amended to March 1, 1978; § 23.33, as amended to September 14, 1969; §§ 23.901 through 23.953, §§ 23.955 through 23.963, §§ 23.967 through 23.1063, as amended to September 14, 1969; §§ 23.1091 through 23.1105, as amended to February 1, 1977; §§ 23.1121 through 23.1193, §§ 23.1351 through 23.1399, as amended to September 14, 1969; §§ 23.1401, as amended to August 11, 1971; §§ 23.1441 through 23.1449, as amended to June 17, 1970; § 23.1521, as amended to December 1, 1978; § 23.1525; § 23.1527, as amended to September 14, 1969; §§ 23.1545, 23.1549, 23.1553, as amended to December 1, 1978; § 23.1557, as amended to December 20, 1973; § 23.1559, as amended to March 1, 1978; § 23.1563, as amended to September 14, 1969; § 23.1583, as amended to December 1, 1978; 14 CFR part 36, effective September 20, 1976, as amended to December 22, 1988.

Mooney M20R:

Model M20R Civil Air Regulations (CAR) 3, effective November 1, 1949, as amended to May 18, 1954, paragraph 3.74, as amended to August 25, 1955; paragraphs 3.109, 3.112, 3.115, 3.118, 3.120, and 34.441 of CAR 3, effective May 15, 1956; as amended to October 1, 1959. In lieu of corresponding CAR 3 paragraphs, where applicable—14 CFR part 23, effective February 1, 1965; § 23.29, as amended to March 1, 1978; § 23.33, as amended to September 14, 1969; §§ 23.901 through 23.953, §§ 23.955 through 23.963, §§ 23.967 through 23.1063, as amended to September 14, 1969; §§ 23.1091 through 23.1105, as amended to February 1, 1977; §§ 23.1121 through 23.1193, §§ 23.1351 through 23.1399, as amended to September 14, 1969; § 23.1401, as amended to August 11, 1971; §§ 23.1441 through 23.1449, as amended to June 17, 1970; § 23.1521, as amended to December 1, 1978; § 23.1525; §§ 23.1527, as amended to September 14, 1969; §§ 23.1545, 23.1549, and 23.1553, as amended to December 1, 1978; §§ 23.1557, as amended to December 20, 1973; § 23.1559, as amended to March 1, 1978; § 23.1563, as amended to September 14, 1969; § 23.1583, as amended to December 1, 1978; 14 CFR part 36, effective September 20, 1976, as amended to December 22, 1988.

Mooney M20S:

Model M20S Civil Air Regulations (CAR) 3, effective November 1, 1949, as amended May 18, 1954; except for paragraph 3.74 amended August 25, 1955; paragraph 3.109, .112, .115, .118, .120, and .441 of CAR 3, effective May 15, 1956, as amended October 1, 1959; and in lieu of corresponding CAR 3 paragraphs, where applicable—14 CFR part 23, effective February 1, 1965: Section 23.29, as amended by Amendment 23–21, dated March 1, 1978; §§ 23.33, dated September 14, 1969; §§ 23.45 through 23.77, as amended by Amendment 23–34, dated January 15, 1987; §§ 23.777, as amended by Amendment 23–7, dated September 14, 1969; §§ 23.901 through 23.953, §§ 23.955 through 23.963, §§ 23.967 through 23.1063, as amended by Amendment 23–7, dated September 14, 1969; §§ 23.1091 through 23.1105, as amended by Amendment 23–17, dated February 1, 1977; §§ 23.1121 through 23.1193, §§ 23.1351 through 23.1399, as amended by Amendment 23–7, dated September 14, 1969; § 23.1311, as amended by Amendment 23.49, dated March 11, 1996; § 23.1337(b), as amended by Amendment 23–7, dated September 14, 1969; § 23.1401, as amended by Amendment 23–11, dated August 11, 1971; §§ 23.1441 through 23.1449, as amended by Amendment 23–9, dated June 17, 1970; § 23.1521, as amended by Amendment 23–21, March 1, 1978; §§ 23.1525 and 23.1527, as amended by Amendment 23–7, dated September 14, 1969; § 23.1529, as amended by Amendment 23–26, dated October 14, 1980; §§ 23.1545, 23.1549, and 23.1553, as amended by Amendment 23–23, dated December 1, 1978; § 23.1555(a), as amended by Amendment 23–7, dated September 14, 1969; § 23.1557, as amended by Amendment 23–14, dated December 20, 1973; § 23.1559, as amended by Amendment 23–21, dated March 1, 1978; § 23.1563, as amended by Amendment 23–7, dated September 14, 1969; §§ 23.1581 through 23.1589, as amended by Amendment 23–34, dated January 15, 1987; 14 CFR part 36, effective September 20, 1976, the current amendment in effect at date of certification; and Equivalent.

For the models listed above, the certification basis also includes all exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 23 as amended) do not contain adequate or appropriate safety standards for the AMSAFE, Inc., inflatable restraint as installed on these Mooney models because of a novel or unusual design feature special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to that model under the provisions of § 21.101.

Novel or Unusual Design Features

The Mooney models M20 (K, M, R, and S) will incorporate the following novel or unusual design feature:

The AMSAFE, Inc., Inflatable Three-Point Restraint Safety Belt With an Integrated Airbag Device. The purpose of the airbag is to reduce the potential for injury in the event of an accident. In a severe impact, an airbag will deploy from the lap belt portion of the restraint, in a manner similar to an automotive airbag. The airbag will deploy between the head of the occupant and airplane interior structure. This will, therefore, provide some protection to the head of the occupant. The restraint will rely on sensors to electronically activate the inflator for deployment.

The Code of Federal Regulations state performance criteria for seats and restraints in an objective manner. However, none of these criteria are adequate to address the specific issues raised concerning inflatable restraints. Therefore, the FAA has determined that, in addition to the requirements of part 21 and part 23, special conditions are needed to address the installation of this inflatable restraint.

Applicability

As discussed above, these special conditions are applicable to the Mooney models M20 (K, M, R, and S) equipped with the AMSAFE, Inc., three-point inflatable restraint system. Should AMSAFE, Inc., apply at a later date for a supplemental type certificate to modify any other model on the Type Certificates identified in these special conditions to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the Mooney models M20 (K, M, R, and S). It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Proposed Special Conditions

The FAA has determined that this project will be accomplished on the basis of not lowering the current level of safety for the Mooney models M20 (K, M, R, and S) occupant restraint system. Accordingly, the FAA proposes the following special conditions as part of the type certification basis for the Mooney models M20 (K, M, R, and S), as modified by AMSAFE, Inc.

Inflatable Three-Point Restraint Safety Belt With an Integrated Airbag Device on Mooney Models M20 (K, M, R, and S)

1. It must be shown that the inflatable restraint will deploy and provide protection under crash conditions. Compliance will be demonstrated using the dynamic test condition specified in § 23.562, which may be modified as follows:

a. The peak longitudinal deceleration may be reduced; however, the onset rate of the deceleration must be equal to or greater than the crash pulse identified in § 23.562.

b. The peak longitudinal deceleration must be above the deployment threshold of the crash sensor and equal to or greater than the forward static design longitudinal load factor required by the original certification basis of the airplane.

c. The means of protection must take into consideration a range of stature from a 5th percentile female to a 95th percentile male. The inflatable restraint must provide a consistent approach to energy absorption throughout the range.

2. The inflatable restraint must provide adequate protection for each occupant. In addition, unoccupied seats that have an active restraint must not constitute a hazard to any occupant.

3. The design must prevent the inflatable restraint from either being incorrectly buckled or incorrectly installed, or both, such that the airbag would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required protection.

4. It must be shown that the inflatable restraint system is not susceptible to inadvertent deployment as a result of wear and tear or the inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings) that are likely to be experienced in service.

5. It must be extremely improbable for an inadvertent deployment of the restraint system to occur, or an inadvertent deployment must not impede the pilot's ability to maintain control of the airplane or cause an unsafe condition (or hazard to the airplane). In addition, a deployed inflatable restraint must be at least as strong as a Technical Standard Order (C114) certificated belt and shoulder harness.

6. It must be shown that deployment of the inflatable restraint system is not hazardous to the occupant or result in injuries that could impede rapid egress. This assessment should include occupants whose restraint is loosely fastened.

7. It must be shown that an inadvertent deployment that could cause injury to a standing or sitting person is improbable. In addition, the restraint must also provide suitable visual warnings that would alert rescue personnel to the presence of an inflatable restraint system.

8. It must be shown that the inflatable restraint will not impede rapid egress of the occupants 10 seconds after its deployment.

9. For the purposes of complying with HIRF and lightning requirements, the inflatable restraint system is considered a critical system since its deployment could have a hazardous effect on the airplane.

10. It must be shown that the inflatable restraints will not release hazardous quantities of gas or particulate matter into the cabin.

11. The inflatable restraint system installation must be protected from the effects of fire such that no hazard to occupants will result.

12. There must be a means to verify the integrity of the inflatable restraint activation system before each flight or it must be demonstrated to reliably operate between inspection intervals.

13. A life limit must be established for appropriate system components.

14. Qualification testing of the internal firing mechanism must be performed at vibration levels appropriate for a general aviation airplane.

Issued in Kansas City, Missouri, on January 11, 2005.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–973 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20081; Directorate Identifier 2004–NM–132–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and 777–300 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 Boeing Model 777–200 and –300 series airplanes. This proposed AD would require modification of the operational program software (OPS) of the air data inertial reference unit (ADIRU). This proposed AD is prompted by a report of the display of erroneous heading information to the pilot due to a defect in the OPS of the ADIRU. We are proposing this AD to prevent the display of erroneous heading information to the pilot, which could result in loss of the main sources of attitude data, consequent high pilot workload, and subsequent deviation from the intended flight path.

DATES: We must receive comments on this proposed AD by March 7, 2005.

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.
- *By 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.

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

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20081; the directorate identifier for this docket is 2004–NM–132–AD.

FOR FURTHER INFORMATION CONTACT: Paul Feider, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6467; fax (425) 917–6590.

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 under **ADDRESSES**. Include ''Docket No. FAA–2005–20081; Directorate Identifier 2004–NM–132–AD'' in the subject line 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 submitted 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 website, 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 can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

We have received a report of the display of erroneous heading information to the pilot due to a defect in the operational program software (OPS) of the air data inertial reference unit (ADIRU) on certain Model 777 series airplanes. Investigation revealed a timing defect in the ADIRU Auto Navigation Realign Logic, which could potentially result in the use of a ''stale'' update, which would then produce incorrect heading information with a variable error magnitude. This condition, if not corrected, could result in loss of the main sources of attitude data, consequent high pilot workload, and subsequent deviation from the intended flight path.

Relevant Service Information

We have reviewed Boeing Service Bulletin 777–34A0082, Revision 1, dated December 19, 2002. The service bulletin describes procedures for modification of the OPS of the ADIRU. The modification includes installing new OPS in the flight compartment at the maintenance access terminal (MAT), or, as an option, replacing the hard drive for the existing OPS in the MAT and/or the Portable MAT. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

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. Therefore, 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 Service Information.''

Difference Between the Proposed AD and Service information

Although the service information recommends accomplishing the modification ''at the earliest opportunity when manpower, parts, and facilities are available,'' we have determined that this imprecise compliance time would not address the identified unsafe condition in a timely manner. However, the manufacturer has recommended that the compliance time not exceed 6 months. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification. In light of all of these factors, we find a compliance time of 6 months for completing the required modification to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Costs of Compliance

There are about 409 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 130 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Required parts would be free of charge. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $8,450, or $65 per airplane.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, 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 proposed AD.

Regulatory Findings

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

For the reasons discussed above, I certify that 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. 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 FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–20081; Directorate Identifier 2004–NM–132–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by March 7, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200 and –300 series airplanes, certificated in any category; as listed in Boeing Service Bulletin 777–34A0082, Revision 1, dated December 19, 2002.

Unsafe Condition

(d) This AD was prompted by a report of the display of erroneous heading information to the pilot due to a defect in the operational program software (OPS) of the air data inertial reference unit (ADIRU). The Federal Aviation Administration is issuing this AD to prevent the display of erroneous heading information to the pilot, which could result in loss of the main sources of attitude data, consequent high pilot workload, and subsequent deviation from the intended flight path.

Compliance

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

Modification

(f) Within 6 months after the effective date of this AD: Modify the OPS of the ADIRU by doing the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 777–34A0082, Revision 1, dated December 19, 2002.

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on January 7, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–991 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20080; Directorate Identifier 2003–NM–193–AD]

RIN 2120–AA64

Airworthiness Directives; Various Aircraft Equipped With Honeywell Primus II RNZ–850/–851 Integrated Navigation Units

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to various aircraft equipped with a certain Honeywell Primus II RNZ–850/–851 Integrated Navigation Unit (INU). The existing AD requires inspecting to determine whether Mod L has been done on the Honeywell Primus II NV850 Navigation Receiver Module (NRM), which is part of the INU. In lieu of this inspection, or for aircraft with an NRM having Mod L, the existing AD requires revising the aircraft flight manual to include new limitations for instrument landing system approaches. For aircraft equipped with an NRM having Mod L or aircraft not inspected previously, this proposed AD would require inspecting to determine whether certain other modifications have been done on the NRM; and doing related investigative, corrective, and other specified actions, as applicable. This proposed AD is prompted by reports of erroneous glide slope indications on certain aircraft equipped with subject INUs. We are proposing this AD to ensure that the flightcrew has an accurate glideslope deviation indication. An erroneous glideslope deviation indication could lead to the aircraft making an approach off the glideslope, which could result in impact with an obstacle or terrain.

DATES: We must receive comments on this proposed AD by March 7, 2005.

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.

For service information identified in this proposed AD, contact Honeywell Aerospace Electronic Systems, CES–Phoenix, P.O. Box 2111, Phoenix, Arizona 85036–1111.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5345; fax (562) 627–5210.

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 under **ADDRESSES.** Include ''Docket No. FAA–2005–20080; Directorate Identifier 2003–NM–193–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 our docket 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 can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

On February 14, 2003, we issued AD 2003–04–06, amendment 39–13054 (68 FR 8539, February 24, 2003), for various aircraft equipped with a certain Honeywell Primus II RNZ–850/–851 Integrated Navigation Unit (INU). As one alternative for compliance, that AD provides for a one-time inspection to determine whether a certain modification has been installed on the Honeywell Primus II NV850 Navigation Receiver Module (NRM), which is part of the INU. In lieu of accomplishing this inspection, and for aircraft found to have an affected NRM, that AD provides for revising the aircraft flight manual to include new limitations for instrument landing system approaches. That AD was prompted by reports indicating that erroneous glideslope indications have occurred on certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 series airplanes. Affected Honeywell Primus II RNZ–850/–851 INUs are installed on numerous aircraft models. We issued that AD to ensure that the flightcrew has an accurate glideslope deviation indication. An erroneous glideslope deviation indication could lead to the aircraft making an approach off the glideslope, which could result in impact with an obstacle or terrain.

The preamble to AD 2003–04–06 specified that we considered the requirements ''interim action'' and that the manufacturer was developing a modification to address the unsafe condition. That AD explained that we may consider further rulemaking if a modification is developed, approved, and available. The manufacturer now has developed such a modification, and we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Relevant Service Information

We have reviewed Honeywell Service Bulletin 7510100–34–A0035, dated July 11, 2003, which describes procedures for inspecting the NRM to determine whether Mod L has been done. If Mod L has not been done, the service bulletin specifies re-identifying the NRM with a new part number. If Mod L has been done, the service bulletin specifies inspecting to determine if Mod N, P, or R has also been done. (Mod N, P, and R test the NRM for discrepant signals.) If any of those mods has been done, the specified actions are replacing the existing modification plates on the NRM and INU with new plates bearing new part numbers. If Mod L has been done, but neither Mod N, P, nor R has been done, the service bulletin specifies doing further investigative actions and corrective actions in accordance with Honeywell Service Bulletin 7510100–34–A0034, then replacing the existing modification plates on the NRM and INU with new plates bearing new part numbers.

Honeywell Service Bulletin 7510100–34–A0034, dated February 28, 2003, describes procedures for inspecting to determine the NRM part number and marking the modification plates of the NRM and INU accordingly. This service bulletin also describes procedures for a related investigative action if neither Mod N nor P is marked, which consists of testing the INU for discrepant signals. If any discrepant signal is detected, corrective action consists of replacing the unit with a new or modified INU. Honeywell Service Bulletin 7510100–34–A0034 refers to Honeywell Service Bulletin 7510134–34–A0016, currently at Revision 001, dated March 4, 2003, as an additional source of service information for re-identifying the INU.

Accomplishing the actions specified in this service information is intended to adequately address the unsafe condition.

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 products of this same type design. This proposed AD would supersede AD 2003–04–06. This proposed AD would retain the requirements of the existing AD. This proposed AD would also require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and Service Information.''

Differences Between the Proposed AD and Service Information

The service information specifies reporting certain information and returning parts to the manufacturer. However, this proposed AD would not require those actions.

Change to Existing AD

This proposed AD would retain all requirements of AD 2003–04–06. Since AD 2003–04–06 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2003–04–06	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (f).
paragraph (b)	paragraph (g).
paragraph (c)	paragraph (h).
paragraph (d)	paragraph (i).

Costs of Compliance

For the purposes of this proposed AD, we estimate that there are about 3,063 aircraft worldwide that may be equipped with a part that is subject to this proposed AD, including about 1,500 aircraft of U.S. registry.

The inspection to determine whether Mod L has been done, which is currently required by AD 2003–04–06 and retained in this proposed AD, takes about 1 work hour per aircraft, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the currently required actions is $65 per aircraft.

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. 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 FAA amends § 39.13 by removing amendment 39–13054 (68 FR 8539, February 24, 2003) and adding the following new airworthiness directive (AD):

Various Aircraft: Docket No. FAA–2005–20080; Directorate Identifier 2003–NM–193–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this airworthiness directive (AD) action by March 7, 2005.

Affected ADs

(b) This AD supersedes AD 2003–04–06, amendment 39–13054 (68 FR 8539, February 24, 2003).

Applicability

(c) This AD applies to aircraft, certificated in any category, equipped with a Honeywell Primus II RNZ–850/–851 Integrated Navigation Unit (INU) having a part number identified in Table 1 of this AD; including, but not limited to BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes; Bombardier BD–700–1A10 series airplanes; Bombardier CL–215–6B11 (CL415 variant) series airplanes; Cessna Model 560, 560XL, and 650 airplanes; Dassault Model Mystere-Falcon 50 series airplanes; Dornier Model 328–100 and –300 series airplanes; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 series airplanes; Learjet Model 45 airplanes; Raytheon Model Hawker 800XP and Hawker 1000 airplanes; and Sikorsky Model S–76A, S–76B, and S–76C aircraft.

TABLE 1.—INU PART NUMBERS

7510100–811 through 7510100–814 inclusive
7510100–831 through 7510100–834 inclusive
7510100–901 through 7510100–904 inclusive
7510100–911 through 7510100–914 inclusive
7510100–921 through 7510100–924 inclusive
7510100–931 through 7510100–934 inclusive

Note 1: This AD applies to Honeywell Primus II RNZ–850/–851 INUs installed on any aircraft, regardless of whether the aircraft has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (m) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Unsafe Condition

(d) This AD was prompted by reports indicating that erroneous glideslope indications have occurred on certain aircraft equipped with the subject INUs. We are issuing this AD to ensure that the flightcrew has an accurate glideslope deviation indication. An erroneous glideslope deviation indication could lead to the aircraft making an approach off the glideslope, which could result in impact with an obstacle or terrain.

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.

Requirements of AD 2003–04–06

Compliance Time for Action

(f) Within 5 days after March 11, 2003 (the effective date of AD 2003–04–06, amendment 39–13054), accomplish the requirements of either paragraph (g) or (h) of this AD. After the effective date of this AD, only accomplishing the requirements of paragraph (g) of this AD is acceptable for compliance with this paragraph.

Inspection To Determine Part Number

(g) Perform a one-time general visual inspection of the modification plate for the Honeywell Primus II NV–850 Navigation Receiver Module (NRM); part number 7510134–811, –831, –901, or –931; which is part of the Honeywell Primus II RNZ–850/–851 INU; to determine if Mod L has been installed. The modification plate is located on the bottom of the Honeywell Primus II RNZ–850/–851 INU, is labeled NV–850, and contains the part number and serial number for the Honeywell Primus II NV–850 NRM. If Mod L is installed, the letter L will be blacked out. Honeywell Service Bulletin 7510100–34–A0035, dated July 11, 2003, is an acceptable source of service information for the inspection required by this paragraph.

(1) If Mod L is installed, before further flight, do paragraph (h) or (j) of this AD. After the effective date of this AD, only accomplishment of paragraph (j) is acceptable for compliance with this paragraph.

(2) If Mod L is not installed, no further action is required by this paragraph.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 3: For more information on the inspection specified in paragraph (g) of this AD, refer to Honeywell Technical Newsletter A23–3850–001, Revision 1, dated January 21, 2003.

Aircraft Flight Manual Revision

(h) Revise the Limitations section of the aircraft flight manual (AFM) to include the following statements (which may be accomplished by inserting a copy of the AD into the AFM):

"Flight Limitations

When crossing the Outer Marker on glideslope, the altitude must be verified with the value on the published procedure.

For aircraft with a single operating glideslope receiver, the approach may be flown using normal procedures no lower than Localizer Only Minimum Descent Altitude (MDA).

For aircraft with two operating glideslope receivers, the aircraft may be flown to the published minimums for the approach using normal procedures if both glideslope receivers are tuned to the approach and both crew members are monitoring the approach using independent data and displays."

Parts Installation

(i) As of March 11, 2003, no person may install a Honeywell Primus II NV–850 NRM on which Mod L has been installed, on the Honeywell Primus II RNZ–850/–851 INU of any aircraft, unless paragraph (h) or (k) of this AD is accomplished. As of the effective date of this AD, only accomplishment of paragraph (k) is acceptable for compliance with this paragraph.

New Requirements of This AD

Inspection To Determine Modification Level of NRM

(j) For aircraft on which Mod L was found to be installed during the inspection required by paragraph (g) of this AD, or for aircraft on which paragraph (h) of this AD was accomplished: Within 12 months after the effective date of this AD, do an inspection of the modification plate on the Honeywell Primus II NV–850 NRM; part number 7510134–811, –831, –901, or –931; which is part of the Honeywell Primus II RNZ–850/–851 INU; to determine if Mod L, N, P, or R is installed. The modification plate located on the bottom of the Honeywell Primus II RNZ–850/–851 INU is labeled NV–850, and contains the part number and serial number for the Honeywell Primus II NV–850 NRM. If Mod L, N, P, or R is installed, the corresponding letter on the modification plate will be blacked out. Honeywell Service Bulletin 7510100–34–A0035, dated July 11, 2003, is an acceptable source of service information for this inspection. Then, before further flight, do all applicable related investigative, corrective, and other specified actions, in accordance with the Accomplishment Instructions of Honeywell Service Bulletin 7510100–34–A0035, dated July 11, 2003. Once the actions in this paragraph are completed, the AFM revision required by paragraph (h) of this AD may be removed from the AFM.

Note 4: Honeywell Service Bulletin 7510100–34–A0035, dated July 11, 2003, refers to Honeywell Service Bulletin 7510100–34–A0034, dated February 28, 2003, as an additional source of service information for inspecting to determine the NRM part number, marking the modification plates of the NRM and INU accordingly, testing the INU for discrepant signals, and replacing the unit with a new or modified INU, as applicable. Honeywell Service Bulletin 7510100–34–A0034 refers to Honeywell Service Bulletin 7510134–34–A0016, currently at Revision 001, dated March 4, 2003, as an additional source of service information for marking the modification plates of the NRM and INU.

(k) If the inspection to determine whether Mod L is installed, as required by paragraph (j) of this AD, is done within the compliance time specified in paragraph (f) of this AD, paragraph (f) of this AD does not need to be done.

No Reporting Requirement

(l) Where Honeywell Service Bulletin 7510100–34–A0035 (or any of the related service information referenced therein) specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on January 7, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–992 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20079; Directorate Identifier 2004–NM–147–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600); and Model A310 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 models, as specified above. This proposed AD would require installing safety signs on all passenger/crew doors, emergency exit doors, and cargo compartment doors. This proposed AD is prompted by a report of injuries occurring on in-service airplanes when crewmembers forcibly initiated opening of passenger/crew doors against residual pressure causing the doors to rapidly open. We are proposing this AD to ensure that crewmembers are informed of the risks associated with forcibly opening passenger/crew, emergency exit, and cargo doors before an airplane is fully depressurized, which will prevent injury to crewmembers, and subsequent damage to the airplane caused by the rapid opening of the door.

DATES: We must receive comments on this proposed AD by February 18, 2005.

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.
- By 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.

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

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20079; the directorate identifier for this docket is 2004–NM–147–AD.

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

SUPPLEMENTARY INFORMATION:

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 under **ADDRESSES.** Include "Docket No. FAA–2005–20079; Directorate Identifier 2004–NM–147–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 submitted 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 our docket website, 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 can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A300 B2 and B4 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600); and Model A310 series airplanes. The DGAC advises that accidents occurred on in-service airplanes when crewmembers forcibly initiated opening of passenger/crew doors against residual pressure causing the doors to rapidly open. If cabin crewmembers are not informed of the risks associated with opening passenger/crew and emergency exit doors when an airplane is not fully depressurized, they may attempt to forcibly open the doors. This condition, if not corrected, could result in injury to crewmembers, and subsequent damage to the airplane caused by the rapid opening of the door.

Relevant Service Information

Airbus has issued the following service bulletins:

Airbus model	Airbus service bulletin	Revision	Date
A300 B2 and B4 series airplanes	A300–11–0027	01	January 30, 2004.
A300–600 airplanes	A300–11–6001	01	January 30, 2004.
A310 series airplanes	A310–11–2002	03	February 4, 2004.

The service bulletins describe procedures for installing safety signs on the inside and outside of the passenger/crew doors and emergency exit doors, and on the outside of the cargo compartment doors. 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–2004–003, dated January 7, 2004, 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 § 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 findings, evaluated all pertinent information, and determined that we need to issue an AD for products 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.

Costs of Compliance

This proposed AD would affect about 182 airplanes of U.S. registry. The proposed actions would take about 5 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $0 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $59,150, or $325 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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. 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 FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2005–20079; Directorate Identifier 2004–NM–147–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by February 18, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B2 and B4 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600); and Model A310 series airplanes; certificated in any category; except those modified in production by either Airbus Modifications 10152 and 10219, or Modifications 8357 and 10151.

Unsafe Condition

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

Compliance

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

Service Bulletin References

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

(1) For Model A300 B2 and B4 series airplanes: Airbus Service Bulletin A300–11–0027, Revision 01, dated January 30, 2004;

(2) For Model A300–600 airplanes: Airbus Service Bulletin A300–11–6001, Revision 01, dated January 30, 2004; and

(3) For Model A310 series airplanes: Airbus Service Bulletin A310–11–2002, Revision 03, dated February 4, 2004.

Install Safety Signs

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

Credit for Previous Service Bulletins

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

Alternative Methods of Compliance (AMOCs)

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

Related Information

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

Issued in Renton, Washington, on January 6, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–993 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20078; Directorate Identifier 2004–NM–210–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model Avro 146–RJ 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 BAE Systems (Operations) Limited Model Avro 146–RJ series airplanes. This proposed AD would require an inspection of the Thales Avionics distance bearing indicator (DBI) to determine part number (P/N) and serial number (S/N), and replacement of the affected DBI with a new or modified DBI. This proposed AD is prompted by a report of defective electrical insulators in DBIs. We are proposing this AD to prevent a short circuit in the DBI due to defective electrical insulation, which could potentially cause a loss of primary navigation instruments (such as airspeed indicator, altimeter, and global positioning system (GPS) information).

DATES: We must receive comments on this proposed AD by February 18, 2005.

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.
- Governmentwide 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.
- By 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.

For service information identified in this proposed AD, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20078; the directorate identifier for this docket is 2004–NM–210–AD.

FOR FURTHER INFORMATION CONTACT:

Technical information: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

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 under **ADDRESSES**. Include ''Docket No. FAA–2005–20078; Directorate Identifier 2004–NM–210–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 submitted 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 our docket website, 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 can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

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

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified us that an unsafe condition may exist on BAE Systems (Operations) Limited Model Avro 146–RJ series airplanes equipped with certain Thales Avionics distance bearing indicators (DBI). The CAA advises that a manufacturing fault with the electrical insulation of the transformer in the DBI's power supply unit could result in the propagation of the 115V AC input power supply through the instrument and onto the DBI's Aeronautical Radio, Inc. (ARINC) 429 Input/Output interfaces (a short circuit). An analysis of this failure concluded that at the airplane level, the effect of this insulation failure/short-circuit could be loss of all airplane primary navigation instruments. Defective electrical insulation, if not corrected, could result in a short circuit in the DBI, and potentially cause a loss of primary navigation instruments (such as airspeed indicator, altimeter, and global positioning system (GPS) information).

Relevant Service Information

BAE Systems (Operations) Limited has issued Modification Service Bulletin SB.34–371–70671A, dated September 19, 2003. The modification service bulletin describes procedures for replacing the DBI with a new or modified DBI. Accomplishing the actions specified in the modification service bulletin is intended to adequately address the unsafe condition. The CAA mandated the modification service bulletin, and an inspection of Thales Avionics DBIs to determine part number (P/N) and serial number (S/N). The CAA issued British airworthiness directive G–2004–0006, dated March 2, 2004, to ensure the continued airworthiness of these airplanes in the United Kingdom.

The BAE Systems (Operations) Limited Modification Service Bulletin SB.34–371–70671A, dated September 19, 2003 refers to Thales Avionics Service Bulletin 354–34–052, dated September 1, 2003, as an additional source of service information for replacing the DBI.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the CAA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products 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, except as discussed under ''Differences Between the Proposed AD and the Service Bulletin.''

Differences Between the Proposed AD and the Service Bulletin

In addition to requiring certain actions in accordance with the service bulletin, this proposed AD would require an inspection for identifying the affected DBI's P/N and S/N. The Accomplishment Instructions of the referenced modification service bulletin do not specify to inspect the DBI for P/N and S/N.

Operators should note that, although the Accomplishment Instructions of the referenced modification service bulletin describe procedures for submitting an advice note related to recording compliance with the service bulletin, this proposed AD would not require that action. The FAA does not need this information from operators.

Costs of Compliance

This proposed AD would affect about 54 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $728 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $42,822, or $793 per airplane.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2005–20078; Directorate Identifier 2004–NM–210–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by February 18, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model Avro 146–RJ series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report of defective electrical insulators in distance bearing indicators (DBI). We are issuing this AD to prevent a short circuit in the DBI due to defective electrical insulation, which could potentially cause a loss of primary navigation instruments (such as airspeed indicator, altimeter, and global positioning system (GPS) information).

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.

Part Number Inspection

(f) Within four months after the effective date of this AD, inspect the Thales Avionics DBI to determine whether a part number (P/N) and serial number (S/N) listed in the Effectivity of BAE Systems (Operations) Limited Modification Service Bulletin SB.34–371–70671A, dated September 19, 2003, is installed. Instead of inspecting the DBI, a review of airplane maintenance records is acceptable if the P/N and the S/N of the DBI can be positively determined from that review.

(1) If the DBI P/N and S/N do not match those listed in the service bulletin, no further action is required by this AD.

(2) If the DBI P/N and S/N do match those listed in the service bulletin, do the actions required in paragraph (g) of this AD within four months after the effective date of this AD.

Replacement

(g) Replace the DBI with a new DBI having P/N 63543–280–1 with a S/N not listed in the service bulletin, or a DBI having P/N 63543–280–2, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin SB.34–371–70671A, dated September 19, 2003.

Parts Installation

(h) As of the effective date of this AD, no person may install a DBI with a part number (P/N) and serial number (S/N) listed in the Effectivity of BAE Systems (Operations) Limited Modification Service Bulletin SB.34–371–70671A, dated September 19, 2003, on any airplane unless it has been modified in accordance with paragraph (g) of this AD.

No Reporting

(i) Although the service bulletin references a reporting requirement in paragraph 2.C.2, ''Documentation,'' that reporting is not required by this AD.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(k) British airworthiness directive G–2004–0006, dated March 2, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on January 6, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–994 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19582; Airspace Docket No. 04–ACE–72]

Proposed Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Newton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to create a Class E surface area at Newton, IA. It also proposes to modify the Class E5 airspace at Newton, IA.

DATES: Comments for inclusion in the Rules Docket must be received on or before March 1, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19582/ Airspace Docket No. 04–ACE–72, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions

presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19582/Airspace Docket No. 04–ACE–72.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This notice proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace designated as a surface area for an airport at Newton, IA. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures to Newton Municipal Airport. Weather observations would be provided by an Automatic Weather Observing/Reporting System (AWOS) and communications would be direct with Des Moines Terminal Radar Approach Control Facility.

This notice also proposes to revise the Class E airspace area extending upward from 700 feet above the surface at Newton, IA. An examination of this Class E airspace area for Newton, IA revealed noncompliance with FAA directives. This proposal would correct identified discrepancies by decreasing the area from a 6.7-mile to a 6.5-mile radius of Newton Municipal Airport, decreasing the width of the extension from 2.6 to 1.4 miles each side of centerline, modifying the extension centerline, defining airspace of appropriate dimensions to protect aircraft departing and executing instrument approach procedures to Newton Municipal Airport and bringing the airspace area into compliance with FAA directives. Both areas would be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DIT 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.

This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority since it would contain aircraft executing instrument approach procedures to Newton Municipal Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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 Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE IA E2 Newton, IA

Newton Municipal Airport, IA
(Lat. 41°40′28″ N., long. 93°01′18″ W.)
Newton VOR/DME
(Lat. 41°47′02″ N., long. 93°06′32″ W.)

Within a 4-mile radius of Newton Municipal Airport, and within 1.3 miles each side of the Newton VOR/DME 150° radial extending from the 4-mile radius of the airport to 1.4 miles southeast of the VOR/DME.

* * * * *

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

* * * * *

ACE IA E5 Newton, IA

Newton Municipal Airport, IA
(Lat. 41°40′28″ N., long. 93°01′18″ W.)
Newton VOR/DME
(Lat. 41°47′02″ N., long. 93°06′32″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Newton Municipal Airport, and within 1.4 miles each side of the Newton VOR/DME 150° radial extending from the 6.5-mile radius of the airport to the VOR/DME.

* * * * *

Issued in Kansas City, MO, on January 3, 2005.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–970 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19581; Airspace Docket No. 04–ACE–71]

Proposed Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Ankeny, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to create a Class E surface area at Ankeny, IA. It also proposes to modify the Class E5 airspace at Ankeny, IA.

DATES: Comments for inclusion in the Rules Docket must be received on or before March 1, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19581/ Airspace Docket No. 04–ACE–71, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19581/Airspace Docket No. 04–ACE–71.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This notice proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace designated as a surface area for an airport at Ankeny, IA. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures to Ankeny Regional Airport. Weather observations would be provided by an Automatic Weather Observing/Reporting System (AWOS) and communications would be direct with Des Moines Terminal Radar Approach Control Facility.

This notice also proposes to revise the Class E airspace area extending upward from 700 feet above the surface at Ankeny, IA. An examination of this airspace area revealed there is inadequate controlled airspace to protect for diverse departures. The examination also identified that one of the airspace extensions is unnecessary and the other does not comply with FAA airspace directives. This proposal would correct these discrepancies by expanding the area from a 7-mile to a 7.1-mile radius of Ankeny Regional Airport, eliminating the north extension, modifying the northeast extension, defining airspace of appropriate dimensions to protect aircraft departing and executing instrument approach procedures to Ankeny Regional Airport and bringing the airspace area into compliance with FAA directives. Both areas would be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward form 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority since it would contain aircraft executing instrument approach procedures to Ankeny Regional Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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 Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE IA E2 Ankeny, IA

Ankeny Regional Airport, IA
(Lat. 41°41′28″ N., long. 93°33′59″ W.)
Ankeny NDB
(Lat. 41°41′55″ N., long. 93°33′50″ W.)

Within a 4.6-mile radius of Ankeny Regional Airport, and within 2.5 miles each side of the 046° bearing from the Ankeny NDB extending from the 7-mile radius of the airport to 7 miles northeast of the NDB, excluding that portion within the Des Moines Class C airspace area.

* * * * *

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

* * * * *

ACE IA E5 Ankeny, IA

Ankeny Regional Airport, IA
(Lat. 41°41′28″ N., long. 93°33′59″ W.)
Ankeny NDB
(Lat. 41°41′55″ N., long. 93°33′50″ W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Ankeny Regional Airport, and within 2.5 miles each side of the 046° bearing from the Ankeny NDB extending from the 7.1-mile radius of the airport to 7 miles northeast of the NDB, excluding that portion within the Des Moines Class C and E airspace areas.

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Issued in Kansas City, MO, on January 3, 2005.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–969 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Civil Rights Division

28 CFR Parts 35 and 36

[CRT Docket No. 2004–DRS01]

RIN 1190–AA46 and 1190–AA44

Nondiscrimination on the Basis of Disability in State and Local Government Services; Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities

AGENCY: Department of Justice, Civil Rights Division.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: On September 30, 2004, the Department of Justice published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register**, 69 FR 58768, in order to begin the process of adopting Parts I and III of the revised guidelines implementing the Americans with Disabilities Act of 1990 (ADA) and the Architectural Barriers Act of 1968 (ABA), published by the Architectural and Transportation Barriers Compliance Board (Access Board) on July 23, 2004, at 69 FR 44083. The comment period is scheduled to close on January 28, 2005. The Department of Justice is extending the comment period until May 31, 2005, in order to provide additional time for the public to prepare comments.

DATES: All comments must be received by May 31, 2005.

ADDRESSES: Submit electronic comments and other data to *http://www.adaanprm.org* or *http://www.regulations.gov*. See **SUPPLEMENTARY INFORMATION**—*Electronic Submission of Comments and Electronic Access* for file formats and other information about electronic filing. Address all written comments concerning the ANPRM to P.O. Box 1032, Merrifield, VA 22116–1032.

FOR FURTHER INFORMATION CONTACT: Anne Beckman or Kate Nicholson, Attorneys, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307–0663 (voice or TTY). This is not a toll-free number. Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514–0301 (voice) or (800) 514–0383 (TTY).

You may obtain copies of this notice in large print, audiotape, or computer disk by calling the ADA Information Line at (800) 514–0301 (voice and (800) 514–0383 (TTY). This notice is also available in an accessible format on the ADA Home Page at *http://www.ada.gov*.

SUPPLEMENTARY INFORMATION:

Extension of Comment Period

The Department of Justice published an ANPRM in the **Federal Register,** 69 FR 58768, on September 30, 2004, in order to begin the process of adopting Parts I and III of the revised guidelines implementing the ADA and the ABA, which were published by the Access Board on July 23, 2004, at 69 FR 44083. Following publication of the ANPRM, the Department received requests from a variety of interested parties to extend the deadline for public comment, citing the complexity of the data requests, the need to distribute surveys, the overlap of the comment period with the holiday season, and the need for additional time in order to provide an informed response to the Department's questions. The Department has decided to extend the comment period until May 31, 2005. The Department believes this extension is ample for an ''advance'' notice of proposed rulemaking, which is merely a prepatory stage in rulemaking process. Interested parties will receive another opportunity to comment when the Department issues a formal notice of proposed rulemaking. The revised guidelines, which are the subject of the ANPRM, will have no legal effect on the public until they are adopted by the Department of Justice in the final stage of the rulemaking process.

Comments on the ANPRM may be provided by May 31, 2005 online at *http://www.adaanprm.org*, or by mail, at P.O. Box 1032, Merrifield, VA 22116–1032.

R. Alexander Acosta,

Assistant Attorney General, Civil Rights Division.

[FR Doc. 05–1015 Filed 1–18–05; 8:45 am]

BILLING CODE 4410–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–OH–0003; FRL–7850–5]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 28, 2004, Ohio submitted an oxides of nitrogen (NO_X) State Implementation Plan (SIP)

revision request to EPA which included amended rules in Ohio Administrative Code (OAC). The purpose of the SIP revision is to exclude from the NO_X trading program carbon monoxide boilers associated with fluidized catalytic cracking units (FCCU). The revision also allocates additional NO_X allowances to the overall budget and to the trading budget to correct a typographical error made in the original rule. Removal of the FCCU boilers from the NO_X trading program is an option Ohio has elected to incorporate in its NO_X control program. The Ohio SIP revision addresses some minor corrections in the rules and also incorporates by reference specific elements of the NO_X SIP Call. EPA agrees with Ohio's request because the changes conform to EPA policy. The collective emissions from these sources are small and the administrative burden, to the states and regulated entities, of controlling such sources is likely to be considerable. Inclusion of these small NO_X sources in the NO_X SIP Call trading program would not be cost effective.

In the Final Rules Section of this **Federal Register**, EPA is approving the changes to the SIP for Ohio's NO_X trading program as a direct final rule without prior proposal because we view this action as noncontroversial and anticipate no adverse comments. If no written adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives meaningful written adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. Any party interested in commenting on this action should do so within the timeframe noted below.

DATES: Comments on this action must be received by February 18, 2005.

ADDRESSES: Submit comments, identified by Regional Material in e-Docket (RME) ID No. R05–OAR–2004–OH–0003 by one of the following methods:

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

Agency Web site: *http://docket.epa.gov/rmepub.* Regional Material in e-Docket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search'' then key in the instructions for submitting comments.

E-mail: bortzer.jay@epa.gov.

Fax: (312) 886–5824.

Mail: You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), 18th floor, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2004–OH–0003. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME *regulations.gov,* or e-mail. The EPA RME 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. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone John Paskevicz, Engineer, at (312) 886–6084 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656. *paskevicz.john@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' are used we mean the EPA.

Table of Contents

General Information

I. What Actions Are EPA Taking Today?
II. Instructions for Submitting Comments.
III. Additional Information.

General Information

I. What Actions Are EPA Taking Today?

The EPA is proposing to approve a revision to the Ohio NO_X trading SIP, specifically Ohio Administrative Code 3745–14 submitted by the State on June 28, 2004. The purpose of the submittal is to change the rule to remove the applicability of the rule to boilers associated with fluidized catalytic cracking units (FCCU) at petroleum refineries. The revision also allocates an additional 16 NO_X allowances to the overall emissions budget and the trading budget to correct a typographical error made in the original state rule. EPA is proposing to approve the Ohio request because the changes conform to our policy regarding carbon monoxide boilers associated with FCCUs at refineries. The collective emissions from these sources are small and the administrative burden, to the states and regulated entities, of controlling such sources is likely to be considerable. Inclusion of these small NO_X sources in the NO_X SIP Call trading program would not be cost effective.

II. Instructions for Submitting Comments

1. *Submitting CBI.* Do not submit this information to EPA through RME,

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 vulgarity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

III. Additional Information

For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register**. Copies of the State's request and the EPA's analysis are available electronically at RME or in hard copy at the above address. (Please telephone John Paskevicz at (312) 886–6084 before visiting the Region 5 Office.)

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

Dated: December 3, 2004.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05–1033 Filed 1–18–05; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 70, No. 12

Wednesday, January 19, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 04–052N]

Codex Alimentarius Commission: Eleventh Session of the Codex Committee on Meat Hygiene

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA), is sponsoring a public meeting on January 21, 2005, to provide information and receive public comments on agenda items that will be discussed at the Eleventh Session of the Codex Committee on Meat Hygiene (CCMH). The 11th Session of the CCMH will be held in Christchurch, New Zealand, February 14–18, 2005. The Acting Under Secretary recognizes the importance of providing interested parties the opportunity to obtain background information on the agenda items that will be discussed at this forthcoming session of the CCMH.

DATES: The public meeting is scheduled for Friday, January 21, 2005 from 2 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in Room 0161, South Agricultural Building, 1400 Independence Avenue, SW., Washington, DC 20250.

Documents related to the 11th Session of the CCMH will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items: Send to the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102, Cotton Annex, Washington, DC 20730. All comments received must include the Agency name and docket number 04–052N.
- All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations/2005_Notices_Index.*

FOR FURTHER INFORMATION ABOUT THE 11TH SESSION OF THE CCMH CONTACT: U.S. Delegate, Perfecto Santiago, DVM, Deputy Assistant Administrator, Office of Food Security and Emergency Preparedness, Room 3130, South Building, 1400 Independence Avenue, SW., Washington, DC 20250 *perfecto.santiago@fsis.usda.gov.*

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Edith Kennard, Codex Committee Analyst, U.S. Codex Office, FSIS, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250–3700, Phone: (202) 720–5261, Fax: (202) 720–3157, e-mail: *edith.kennard@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international standard-setting organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and the Environmental Protection Agency (EPA) manage and carry out U.S. Codex activities.

The Codex Committee on Meat Hygiene (CCMH) elaborates worldwide standards and/or codes of practice as appropriate for meat hygiene. The Committee is chaired by New Zealand.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 11th Session of CCMH will be discussed during the public meeting:

1. Matters referred from the Codex Alimentarius Commission and other Codex Committees.
2. Draft Code of Hygienic Practice for Meat.

Each issue listed will be fully described in documents distributed, or to be distributed, by the New Zealand Secretariat to the Meeting. Members of the public may access copies of these documents (*see* **ADDRESSES**).

Public Meeting

At the January 21, 2005 public meeting, these agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate, for the 11th Session of the CCMH, Perfecto Santiago (*see* **ADDRESSES**). Written comments should state that they relate to activities of the 11th Session of the CCMH.

Additional Public Information

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update is available on the FSIS Web page. Through Listserv and the Web page,

FSIS is able to provide information to a much broader, more diverse audience.

Done at Washington, DC on January 14, 2005.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 05–1102 Filed 1–14–05; 12:36 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Payette National Forest, ID; Proposed Grouse Creek Road Relocation

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental statement.

SUMMARY: In 2002, the USDA Forest Service, Intermountain Region, gave notice that the agency would prepare an environmental impact statement (EIS) for the relocation of the existing Grouse Creek Road (Forest Service Road 50325). The road is located on the Payette National Forest, McCall Ranger district, Near the Secesh River and within the Crystal Mountain Inventoried Roadless Area. Because the new road would have been located in an inventoried roadless area, the Regional Forester was the Responsible Official. The Notice of Intent (NOI) to prepare an EIS was published in the June 21, 2002 **Federal Register** (67 FR 42230). Since that time, review of the proposed project by research scientists and other Forest Service specialists has determined that improvements to the existing road would cause fewer impacts to critical fish resources than relocating the road. The identified improvements can be accomplished using normal road maintenance practices, which do not require preparation of an EIS. Therefore, the planned EIS is not needed, and the NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Dan Anderson, Environmental Coordinator, Payette National Forest, McCall Ranger District, P.O. Box 1026, McCall, ID 83638, or by phone at (208) 634–0400, by fax at (208) 634–0433, or by e-mail: *danderson02@fs.fed.us.*

Dated: January 7, 2005.

Jack G. Troyer,

Intermountain Regional Forester.

[FR Doc. 05–997 Filed 1–18–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Sunshine Act; Meetings

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 10 a.m., Wednesday, January 26, 2005.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. FY 2005 Budget.
2. Administrative and other issues.

ACTION: Board of Directors Meeting.

TIME AND DATE: 2 p.m., Wednesday, January 26, 2005.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Results of the 2004 election and swearing in of new directors.
3. Selection of board officers.
4. Action on Minutes of the November 5, 2004, board meeting.
5. Secretary's Report.
6. Treasurer's Report.
7. Discussion of duties and responsibilities of the board.
8. Privatization update.
9. Establish dates for 2005 board meetings.
10. Acknowledgment of service to the board.
11. Other business.
12. Governor's Remarks.
13. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Jonathan Claffey, Acting Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Curtis Anderson,

Acting Governor, Rural Telephone Bank.

[FR Doc. 05–1177 Filed 1–14–05; 3:18 pm]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 2–2005]

Foreign-Trade Zone 74—Baltimore, MD; Request for Voluntary Termination of Baltimore Marine Industries Subzone 74A

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Baltimore Development Corporation, on behalf of the City of Baltimore, Maryland, grantee of FTZ 74, requesting authority to terminate Subzone 74A at the shipbuilding facilities of Baltimore Marine Industries, Inc. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 7, 2005.

Subzone 74A was approved by the Board on March 14, 1985 (Board Order 290, 50 FR 13057; 4/2/85) as Bethlehem Steel Corporation and currently consists of 215 acres located on the lower east bank of the Patapsco River, on the west side of the Sparrows Point Peninsula, some 6 miles southeast of Baltimore.

The applicant is now requesting authority to terminate the subzone stating that Baltimore Marine Industries declared bankruptcy in 1999 and no longer has need for subzone status.

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 below:

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 U.S. Postal Service: Foreign Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is March 21, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 4, 2005.

Dated: January 7, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–1039 Filed 1–18–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 4–2005]

Foreign-Trade Zone 74—Baltimore, MD; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Baltimore Development Corporation, on behalf of the City of Baltimore, Maryland, grantee of FTZ 74, requesting authority to expand and reorganize its zone in the Baltimore, Maryland area, within the Baltimore Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 7, 2005.

FTZ 74 was approved by the Board on January 21, 1982 (Board Order 183, 47 FR 5737; 2/8/82) and expanded on January 31, 1989 (Board Order 427, 54 FR 5992; 2/7/89) and April 5, 2001 (Board Order 1157, 66 FR 19423; 4/16/01). FTZ 74 currently consists of eleven sites (1,464 acres) in the Baltimore, Maryland, area:

Site 1—(20 acres) Holabird Industrial Park,

Site 2—(127 acres) within the Point Breeze Business Center, 2500 Broening Highway, adjacent to the Dundalk Marine Terminal,

Site 3—(157 acres) within the Seagirt Marine Terminal,

Site 3a—(14 acres) at 1200 South Newkirk Street (expires 4/1/06),

Site 3b—(2 acres) at 4200 Boston Street (expires 4/1/06),

Site 4—(272 acres) Dundalk Marine Terminal,

Site 4a—(40 acres) contiguous to the eastern border of Site 4 (expires 7/1/05),

Site 5—(97 acres) Chesapeake Terminal and American Port Services Center,

Site 6—(274 acres) Atlantic and Fairfield Terminals,

Site 7—(196 acres) North & South Locust Point Terminals,

Site 8—(157 acres) Rukert and Clinton Street Marine Terminals,

Site 9—(15 acres) Belt's Business Center, 600 Folcroft Street,

Site 10—(81 acres) Pulaski Business Park, 6200 Pulaski Highway,

Site 11—(12 acres) Obrecht Business Center, 6200 Frankford Avenue.

The applicant is now requesting authority to update, expand and reorganize the zone and to add three new sites as described below. The proposal includes a request to restore zone status to parcels located within the existing or proposed zone sites that had been deleted from the zone boundary in earlier changes.

Site 4—Make Site 4a permanent and combine it with Site 4 increasing the size of Site 4, located on Broening Highway, Baltimore, to 312 acres;

Site 12—Add a new site, designated as Site 12, that would involve the 32-acre Canton Trade Center. The site would include existing Sites 3a and 3b (16 acres), which would be made permanent, and a new 16-acre parcel adjacent to Newkirk and Boston Streets;

Site 13—Add new Site 13 (100 acres) consisting of the Marley Neck Industrial Park located at 6600 Cabot Drive, Baltimore, Anne Arundel County;

Site 14—Add new Site 14 (91 acres) consisting of the Enterprise Business Park located at 1501 Perryman Road, Perryman, Harford County.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

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 below:

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 U.S. Postal Service: Foreign Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is March 21, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 4, 2005).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No. 1 listed above and at the U.S. Department of Commerce Export Assistance Center, 401 E. Pratt Street, Suite 2432, Baltimore, MD 21202.

Dated: January 11, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–1041 Filed 1–18–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 3–2005]

Foreign-Trade Zone 16—Sault Sainte Marie, MI, Application for Subzone Status, Northern Imports, LLC, (Magnesium and Aluminum Casting)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Sault Ste. Marie, grantee of FTZ 16, requesting special-purpose subzone status for the magnesium and aluminum casting facilities of Northern Imports, LLC (NI), located in Harbor Springs and Newberry, Michigan. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 7, 2005.

The proposed subzone would be composed of two subsidiaries' sites: Site 1 Northern Diecast plant (8 acres/93,000 sq. ft., manufacturing plant)—8582 Moeller Drive, Harbor Springs (Emmet County), Michigan, about 100 miles south of Sault Ste. Marie, Michigan; and, Site 2 Northern Casting Company plant (5 acres/27,000 sq. ft., manufacturing plant)—6641 County Road 392, Newberry (Luce County), about 70 miles west of Sault Ste. Marie. The facilities (250 employees) are used to manufacture magnesium and aluminum automotive parts, parts of domestic appliances, and sporting goods for the U.S. market and export. The application requests FTZ benefits only for NI's export manufacturing activity. (Inverted tariff benefits on foreign magnesium alloy used in production for the U.S. market are expressly excluded from this proposal.) Under the proposed activity, foreign-origin magnesium alloy (HTSUS 8104.19.00; ASTM: AM50A, AM60B, AZ91 D) and aluminum alloy (HTSUS 7601.20.90, duty free) would be used to diecast automotive components (including steering wheels, columns, boxes; spools, diffusers, end caps, mirror brackets, steering wheels, airbag canisters), housings for domestic vacuum cleaners, and archery bows. The foreign-origin alloys would

comprise about 90 percent of the finished products' material value. The two facilities can process some 17 million pounds of metal annually. On foreign magnesium alloy that falls within the scope of the Department's antidumping duty orders, the application indicates that all such foreign-origin magnesium alloy would be admitted to the proposed subzone under domestic status (19 CFR 146.43(a)(2); thereby precluding inverted tariff benefits or reduced duty payment on scrap or waste.

FTZ procedures would exempt NI from Customs duty payments on the foreign magnesium alloy not subject to antidumping orders and aluminum alloy used in export production (37% of shipments). NI would be exempt from customs duty payments on foreign magnesium alloy scrap, waste and dross generated during manufacturing of finished products for export (which could be significant). On its domestic sales, the company has elected to forego any inverted tariff benefits on foreign magnesium alloy not subject to antidumping duty orders (these products will be admitted in privileged foreign status (19 CFR 146.41)). The application indicates that subzone status would help improve the facilities' international competitiveness. 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 three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building–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–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is March 21, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 4, 2005).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No. 1 listed above and at the Office of the Port Director, U.S. Customs and Border Protection, International Bridge Plaza, Sault Sainte Marie, MI 49783.

Dated: January 7, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–1040 Filed 1–18–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Notice of Rescission of Antidumping Duty Administrative Review: Sebacic Acid From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from SST Materials, Inc. d/b/a Genesis Chemicals, Inc. (Genesis), a domestic producer of subject merchandise, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on sebacic acid from the People's Republic of China (PRC) for entries of subject merchandise by Tianjin Chemical Import and Export Corporation (Tianjin) and Guangdong Chemical Import and Export Corporation (Guangdong), covering the period July 1, 2003, through June 30, 2004. We are now rescinding this review as a result of the petitioner's withdrawal of its request for an administrative review.

EFFECTIVE DATE: January 19, 2005.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats or Brian Ledgerwood, China/NME Group, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5047 or (202) 482–3836, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2004, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on sebacic acid from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 39903 (July 1, 2004). On August 30, 2004, pursuant to a request made by Genesis, the Department initiated an administrative review of the antidumping duty order on sebacic acid from the PRC with respect to Tianjin and Guangdong. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 69 FR 52857 (August 30, 2004). On November 29, 2004, Genesis withdrew its request for an administrative review of sebacic acid from the PRC.

Scope of the Review

The products covered by this order are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH_2)_8(COOH)_2$, which include but are not limited to CP Grade (500 ppm maximum ash, 25 maximum APHA color), Purified Grade (1000 ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500 ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C10 dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the *Harmonized Tariff Schedule of the United States (HTSUS).* Although the *HTSUS* subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Rescission of Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review. The Department's regulations further provide that the Secretary may extend this time limit if the Secretary determines that it is reasonable to do so. In this case, the 90-day deadline fell on a non-business day and, therefore, the deadline was the next business day, November 29, 2004. Genesis made a timely withdrawal of its request for an administrative review and the Department has granted the request to rescind the review because Genesis was the only party to request the review. The Department will issue appropriate assessment instructions to U.S. Customs

and Border Protection within 15 days of publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 251.213(d)(4).

Dated: January 11, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–195 Filed 1–18–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808]

Stainless Steel Plate in Coil From Belgium: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On December 14, 2004, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on stainless steel plate in coils from Belgium for the period May 1, 2002, through April 30, 2003. *See Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review,* 69 FR 74495 (December 14, 2004) (*Final Results*). We are amending our *Final Results* to correct ministerial errors alleged by Ugine and ALZ Belgium (Respondent) pursuant to section 751(h) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: January 19, 2005.

FOR FURTHER INFORMATION CONTACT: Toni Page or Elfi Blum, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1398 or (202) 482–0197, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Antidumping Duty Order

Effective March 11, 2003, in accordance with *Allegheny Ludlum Corp.* v. *United States,* 287 F.3d 1365 (Fed. Cir. 2002) remanded to CIT No. 99–06–00361, slip op. 2002–147 (CIT Dec. 12, 2002), and *Notice of Amended Antidumping Duty Orders: Certain Stainless Steel Plate in Coils from Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 68 FR 11520 (March 11, 2003), the scope of this order was amended. Therefore, for purposes of this review, there were separate scopes in effect during the period of review (POR).

Scope of Order From May 1, 2002 Through March 10, 2003

The product covered by this order is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this order are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of this order. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219110030, 7219110060, 7219120005, 7219120020, 7219120025, 7219120050, 7219120055, 7219120065, 7219120070, 7219120080, 7219900010, 7219900020, 7219900025, 7219900060, 7219900080, 7220110000, 7220201010, 7220201015, 7220201060, 7220201080, 7220206005, 7220206010, 7220206015, 7220206060, 7220206080, 7220900010, 7220900015, 7220900060, and 7220900080. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Scope of Order on or After March 11, 2003

The product covered by this order is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this order are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this order is currently classifiable in the HTS at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to these orders is dispositive.

Amendment of Final Results

On December 14, 2004, the Department published the *Final Results*

of the administrative review of the antidumping duty order on stainless steel plate in coils for the period May 1, 2002, through April 30, 2003. *See Final Results*. In accordance with section 751(h) of the Act and 19 CFR 351.224(c)(2), on December 14, 2004, Respondent timely filed an allegation that the Department made ministerial errors in the final results. The Department is amending the *Final Results* to correct these errors, as detailed below.

First, Respondent states that the Department expressed its intention to correct certain gross unit prices in the home market sales database based on pre-verification corrections, as stated in the *Memorandum to The File from Toni Page and Elfi Blum through Maria MacKay: Analysis for Ugine & ALZ, N.V. Belgium (U&A Belgium) for the Final Results of the Fourth Administrative Review of Stainless Steel Plate in Coils (SSPC) from Belgium*, dated December 7, 2004 (*Analysis Memorandum*).

Respondent further states that the Department, in making those changes in the home market (HM) sales program, identifies the sales to be corrected by referring to the observation number of those sales. However, Respondent contends, the observation numbers identified in the Department's HM sales program are not the observation numbers of the sales the Department intended to correct. Respondent provided a list of the observation numbers Respondent claims are the correct numbers,[1] and states that the Department should use these numbers in identifying the appropriate sales. Second, Respondent alleges that the Department, when recalculating the HM credit expense to account for a revision to the HM short-term borrowing rate in the HM sales program, inadvertently subtracted the date of payment from the date of shipment. The appropriate method for determining credit expenses, Respondent argues, is to subtract the date of shipment from the date of payment. Third, Respondent argues, that the Department failed to re-calculate inventory carrying cost based on the revised short-term borrowing rate. Petitioners did not file comments in response to Respondent's ministerial error allegations.

The Act, and the Department's regulations, define a ministerial error as one involving ''addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' *See* section 751(h) of the Act and 19 CFR 351.224(f).

After reviewing Respondent's allegations, we have determined, in accordance with section 751(h) of the Act and 19 CFR 351.224, that the three allegations constitute ministerial errors. Regarding its first allegation, we agree with Respondent that the Department inadvertently identified the incorrect observation numbers for those sales with a revised gross unit price. *See Analysis Memorandum*, p. 2–3. Further, as Respondent alleged, when recalculating credit expenses based on the revised interest rate obtained at verification, we erroneously subtracted the pay date from the ship date to arrive at the credit period instead of subtracting ship date from pay date. We also agree with Respondent's final allegation that we inadvertently failed to recalculate the inventory carrying costs based on the revised interest rate. Therefore, we are amending the *Final Results* to correct the above-mentioned ministerial errors. All changes to the programming language in the HM sales program can be found in the analysis memorandum for the amended final results. *See Memorandum to The File from Toni Page and Elfi Blum through Maria MacKay: Analysis for Ugine & ALZ, N.V. Belgium (U&A Belgium) for the Amended Final Results of the Fourth Administrative Review of Stainless Steel Plate in Coils (SSPC) from Belgium*, dated January 13, 2005 (*Amended Final Analysis Memo*). As a result of corrections of the ministerial errors in the *Final Results*, the revised weight-averaged dumping margin is as follows:

Manufacturer/exporter	Revised margin (percent)
Ugine & ALZ Belgium	2.71

With respect to Ugine & ALZ, N.V. Belgium (U&A Belgium), the Department will issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP) within 15 days of publication of the amended final results of review. Accordingly, the Department will determine, and CBP will assess, antidumping duties on all entries of subject merchandise from U&A Belgium during the period May 1, 2002, through April 30, 2003, in accordance with these amended final results. The revised cash deposit rate for U&A Belgium shown above is effective on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and will remain in effect until publication of the final results of the next administrative review.

Consequently, we are issuing and publishing these amended final results and notice in accordance with sections 751(a)(1), 751(h), and 777(i) of the Act, and 19 CFR 351.224(f).

Dated: January 12, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–196 Filed 1–18–05; 8:45 am]

BILLING CODE 3510–DS–P

[1] Respondent attached the sales verification exhibit 1, showing the invoice number, the skid number, the originally reported gross unit price, the corrected gross unit price, and the weight of the skid.

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, February 25, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–1114 Filed 1–14–05; 11:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, February 11, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–1115 Filed 1–14–05; 11:46 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act; Meeting

TIME AND DATE: 11 a.m., Friday, February 4, 2005.

PLACE: 1155 21st., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–1116 Filed 1–14–05; 11:47 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, February 18, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–1117 Filed 1–14–05; 11:48 am]

BILLING CODE 6351–01–M

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 February 18, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, 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: January 12, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Reinstatement.

Title: 2004/06 Beginning Postsecondary Students Longitudinal Study (BPS:04/06).

Frequency: One time.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,135.

Burden Hours: 440.

Abstract: The 2004/06 Beginning Postsecondary Students Longitudinal Study (BPS:04/06) is being conducted to continue the series of longitudinal data collection efforts started in 1990 with the National Postsecondary Students Aid Study to enhance knowledge concerning progress and persistence in postsecondary education for new entrants. The Study will address issues such as progress, persistence, and completion of postsecondary education programs, entry into the workforce, the relationship between experiences during postsecondary education and various societal and personal outcomes, and returns to the individual and to society on the investment in postsecondary education.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2643. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–166 Filed 1–18–05; 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 February 18, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, 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: January 12, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: Education Longitudinal Study of 2002, Second Followup.

Frequency: One time.

Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 987. *Burden Hours:* 576.

Abstract: The Education Longitudinal Study of 2002 Second Followup is the third time this cohort of students, who were in 10th grade in 2002, will be interviewed and assessed. Data will be collected from students, dropouts, and school administrators. The field test for this study will be conducted in spring 2005. The full scale first followup study will be conducted in spring 2006. This longitudinal study is intended to measure school effectiveness and impact on postsecondary and labor market outcomes.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2638. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–167 Filed 1–18–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Vocational Rehabilitation Services Projects for American Indians With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.250F.

DATES: Applications Available: January 19, 2005.

Deadline for Transmittal of Applications: May 19, 2005.

Eligible Applicants: The governing bodies of Indian tribes (and consortia of those governing bodies) located on Federal and State reservations.

Estimated Available Funds: $11,169,000.

Estimated Median Amount of Awards: The estimated median amount of an award is $400,000, which means that one-half of the awards will be over $400,000 and one-half of the awards will be under $400,000, with the majority of awards in the range of approximately $350,000–$425,000.

Maximum Award: There is no maximum award amount. However, when preparing your submission, applicants should be aware that we anticipate a less than four percent increase in the award amounts for this program compared to FY 2004.

Estimated Number of Awards: 23.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to provide vocational rehabilitation services to American Indians with disabilities who reside on or near Federal or State reservations, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choices, so that they may prepare for and engage in gainful employment, including self-employment, telecommuting, or business ownership.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 121(b)(4) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 741).

Competitive Preference Priority: For FY 2005 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets this priority.

This priority is:

Continuation of Previously Funded Tribal Programs

In making new awards under this program, we give priority consideration to applications for the continuation of tribal programs that have been funded under this program.

Program Authority: 29 U.S.C. 741.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, 84, 85, and 97. (b) The regulations in 34 CFR parts 369 and 371.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $11,169,000.

Estimated Median Amount of Awards: The estimated median amount of an award is $400,000, which means that one-half of the awards will be over $400,000 and one-half of the awards will be under $400,000, with the majority of awards in the range of approximately $350,000–$425,000.

Maximum Award: There is no maximum award amount. However, when preparing your submission, applicants should be aware that we anticipate a less than four percent increase in the award amounts for this program compared to FY 2004.

Estimated Number of Awards: 23.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* The governing bodies of Indian tribes (and consortia of those governing bodies) located on Federal and State reservations.

2. *Cost Sharing or Matching:* See 34 CFR 371.40.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain an application package via Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain an application package from ED Pubs, write or call the following: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.250F.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Service Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. It is suggested that you limit Part III to the equivalent of no more than 35 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- The suggested page limit does not apply to Part I, the cover sheet; Part II, the Budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support.

3. *Submission Dates and Times:*

Applications Available: January 19, 2005.

Deadline for Transmittal of Applications: May 19, 2005.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit an application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The applicant's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application and you have initiated an electronic application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date;

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the persons listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contacts) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgement of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications By Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must send the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.250F), 400 Maryland Avenue, SW., Washington, DC 20202–4260.

or

By mail through a commercial carrier:

U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.250F), 7100 Old Landover Road, Landover, MD 20785–1506.

You must show proof of mailing consisting of one of the following:

1. A legibly dated U.S. Postal Service postmark;

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

3. A dated shipping label, invoice, or receipt from a commercial carrier; or

4. Any other proof of mailing acceptable to the U.S. Secretary of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

1. A private metered postmark, or

2. A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications By Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must hand deliver the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.250F), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

1. You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

2. The Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this program are from 34 CFR 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department has established the following long-term goal for this program: By the end of FY 2008, at least 65 percent of all American Indians with disabilities who exit the program after receiving services under an individualized plan for employment will achieve an employment outcome. Each grantee must annually report its performance on this measure through the American Indian Vocational Rehabilitation Services Program Annual Performance Reporting System.

In addition, this program is part of the Administration's job training and employment common measures initiative. The common measures for job training and employment programs targeting adults are: Entered employment (percentage employed in the first quarter after program exit); retention in employment (percentage of those employed in the first quarter after exit that were still employed in the second and third quarter after program exit); earnings increase (percentage change in earnings pre-registration to post program and first quarter after exit to third quarter after exit); and efficiency (annual cost per participant). The Department is currently working toward implementation of these

common measures. Each grantee will be required to collect and report data for the common measures when implemented.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Joyce Libby or Alfreda Reeves, U.S. Department of Education, 400 Maryland Avenue, SW., room 5038, Potomac Center Plaza, Washington, DC 20204–2800. Telephone: for Joyce Libby (202) 245–7432; for Alfreda Reeves (202) 245–7485.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: January 12, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–1038 Filed 1–18–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC05–561–000; FERC–561]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

January 7, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: Incompliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by March 14, 2005.

ADDRESSES: Copies of the proposed collection of information can be obtained from the Commission's Web site (*http://www.ferc.gov/docs-filing/hard-fil-elec.asp* or click on ''Documents and Filing'', ''Hardcopy filing'' and then ''Electric''. Written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC05–561–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the *eLibrary* link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMEMENTARY INFORMATION: The information collected under the requirements of FERC–561 ''Annual Report of Interlocking Positions'' (OMB No. 1902–0099) is used by the Commission to implement the statutory provisions of Section 305 of the Federal Power Act (FPA), as amended by Title II, section 211 of the Public Utility Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. 825d). Submission of FERC–561 satisfies the FPA section 305(b) and (c) annual reporting requirements for public utility officers and directors to report officer and director positions they hold with financial institutions, insurance companies, utility equipment providers, utility fuel providers and a utility's top twenty customers of electric energy. FPA section 305(c)(3)(A) defines the public utilities who are required to file. FPA section 305(c)(2) requires that the filed information be made available to the public. FPA section 305(c)(1) requires an annual filing deadline of April 30th. The necessary filing information, the required filers, the requirement to make the information available to the public and the filing deadline are mandated by the FPA. The Commission is not empowered to amend or waive these statutory requirements. Requirement the Commission has the authority to amend, such as format of the filing itself, and the number of required copies are found at 18 CFR 46.1 and 131.31.

The information is collected by the Commission to identify persons holding interlocking position between public utilities and possible conflicts of interest. Through this process, the Commission is able to review and exercise oversight of interlocking directorates of public utilities and their related activities. Specifically, the Commission must determine that individuals in utility operations holding two positions at the same time would adversely affect the public interest. The Commission can employ enforcement proceedings when violations and omissions of the Act's provisions occur. The compliance with these requirements is mandatory.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
1649	1	.25	412

The estimated total cost to respondents is $21,516. (412 hours divided by 2,080 hours per year per employee times $108,558 per year average per employee = $21,516.) The cost per respondent is $13.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–183 Filed 1–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC05–566–000; FERC–566]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

January 7, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Public Law 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by March 14, 2005.

ADDRESSES: Copies of the proposed collection of information can be obtained from the Commission's Web site, *http://www.ferc.gov/docs-filing/hard-fil-elec.asp,* or click on ''Documents and Filing'', ''Hardcopy filing'' and then ''Electric''. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC05–566–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the *eLibrary* link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC 566 ''Annual Report of a Utility's Twenty Largest Purchasers'' (OMB No. 1902–0114) is used by the Commission to implement the statutory provisions of section 305 of the Federal Power Act (FPA), (16 U.S.C. 825d), as amended by Title II, section 211 of the Public Utility Regulatory Policies Act of 1978 (PURPA). FPA section 305—Officials Dealing in Securities; Interlocking Directorates—defines the annual reporting requirements for public utility officers and directors to report office and director positions they hold with, among other entities, a public utility's top twenty customers of electric energy. FPA section 305(c)(2) states ''each public utility shall publish a list, pursuant to rules prescribed by the Commission * * *.'' This statutory requirement to publish the customer's list allows the public the opportunity to compare the customers listed with the interlocking directorate information filed in FERC–561 (1902–0099), by public utility officers and directors, for identification of positions where the relationship may be employed, for example to the detriment of the utility, or the public interest. The required public utility filers, the necessary filing information, the requirement to publish the information and the filing deadline are all specifically mandated by the FPA. The Commission is not empowered to amend or waive these statutory requirements. Requirements the Commission has the authority to amend, such as the filing format and the numbers of required copies are found at 18 CFR 46.3.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
183	1	6	1,098

The estimated total cost to respondents is $57,306. (1,098 hours divided by 2,080 hours per year per employee times $108,558 per year average per employee = $57,306). The cost per respondent is $313.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–184 Filed 1–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–445–009]

Alliance Pipeline L.P.; Notice of Compliance Filing

January 12, 2005.

Take notice that on January 7, 2005, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, proposed to become effective January 1, 2005:

Substitute Fourth Revised Sheet No. 11; Substitute Fourth Revised Sheet No. 12; Substitute Fourth Revised Sheet No. 13; and Substitute Fourth Revised Sheet No. 14.

Alliance states that the referenced tariff sheets were filed to revise the summaries of Alliance's negotiated rate transactions to reflect the service commencement date, in compliance with the Commission's order issued on December 23, 2004.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–187 Filed 1–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–000]

San Diego Gas & Electric Co.; Notice of FERC Staff Participation in Conference Call Between California Independent System Operator Corporation and Market Participants

January 10, 2005.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may participate in the conference call between the California Independent System Operator Corporation and its stakeholders on January 13, 2005 to discuss issues pertaining to the status of the scheduled refund re-runs.

The discussion may address matters at issue in the following proceedings:

San Diego Gas & Electric Co. v. *Sellers of Energy & Ancillary Serv., et al.* Docket Nos., EL00–95–000, EL00–98–000, *et al.*

California Independent System Operator Corporation, Docket No. ER03–746–000, *et al.*

The conference call will begin at 12 noon PDT and will last for approximately 1 hour.

For more information contact Heidi Werntz, Office of General Counsel, Federal Energy Regulatory Commission at (202) 502–8910 or *Heidi.Werntz@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E5–181 Filed 1–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–51–000]

Dominion Transmission, Inc.; Notice of Technical Conference

January 12, 2005.

Take notice that the Commission will convene a technical conference on Tuesday, February 1, 2005, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The purpose of the conference will be to discuss proposals by Dominion to update tariff provisions in its General Terms & Conditions (GT&C) pertaining to rights of first refusal and the allocation of unsubscribed firm capacity. The Commission directed its staff to convene this technical conference in a November 30, 2004 Order.[1]

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Eric Winterbauer at (202) 502–8329 or e-mail *eric.winterbauer@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–180 Filed 1–18–05; 8:45 am]

BILLING CODE 6717–01–P

[1] Dominion Transmission, Inc., 109 FERC ¶ 61,244 (2004).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR04–5–002]

PanEnergy Louisiana Intrastate, LLC; Notice of Compliance Filing

January 12, 2005.

Take notice that on July 8, 2004, PanEnergy Louisiana Intrastate, LLC tendered for filing a revised Statement of Operating Conditions to comply with the Commission's April 23, 2004 Letter Order in Docket Nos. PR04–5–000 and RP04–5–001.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on January 19, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–188 Filed 1–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–147–000]

Portland General Electric Company; Notice of Tariff Filing

January 12, 2005.

Take notice that on January 5, 2005, Portland General Electric Company (PGE) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 63, with an effective date of February 7, 2005.

PGE states it is seeking FERC authority to allow shippers to request up to two transportation nomination changes under any transportation rate schedule in this tariff following the Intraday 2 Nomination Cycle.

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. E5–189 Filed 1–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–845–004; ER99–845–005; ER99–845–006; ER99–845–007; EL05–37–000]

Puget Sound Energy, Inc.; Notice of Meeting

January 12, 2005.

Purpose of Meeting: Puget Sound Energy, Inc. (Puget) has requested a meeting with Commission staff to discuss its updated market power analysis in the above-captioned proceedings.

Date and Time of Meeting: Thursday, January 13, 2005 at 11 a.m. (e.s.t.) at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Participants: Participation on this call will be limited to interested parties who have requested and been granted access to critical energy infrastructure information (CEII) in accordance with 18 CFR 1388.113(d). The CEII request form may be found at *http://www.ferc.gov/help/how-to/ceii-req-form.doc.* All CEII requests must be received no later than 5 p.m. (e.s.t). on January 12, 2005. Requesters will be required to sign a non-disclosure agreement prior to obtaining access to CEII. Representatives of Puget will be granted access in accordance with 18 CFR 388.113(d)(1) without having to file a formal CEII request or non-disclosure agreement.

FERC Contact: All interested parties wishing to attend or participate by telephone are asked to contact Thomas Brownfield at *Thomas.Brownfield@ferc.gov* or (202) 502–8666 by Wednesday, January 14, 2005, for further information.

Magalie R. Salas,

Secretary.

[FR Doc. E5–182 Filed 1–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–56–001]

Terasen Sumas Inc.; Notice of Cancellation of Tariff

January 12, 2005.

Take notice that on October 6, 2004, Terasen Sumas Inc. (Terasen) filed a notice of cancellation of its FERC Gas Tariff, including its Part 284 rate schedules, effective October 1, 2004. Terasen states that its filing is made pursuant to Paragraph D of the Commission's September 22, 2004 Order in this proceeding and section 154.602 of the Commission's regulations.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on January 19, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–190 Filed 1–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–33–000, et al.]

USGen New England, Inc., et al.; Electric Rate and Corporate Filings

January 7, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. USGen New England, Inc., Dominion Energy New England, Inc., and Dominion Energy Marketing, Inc.

[Docket No. EC05–33–000]

Take notice that on December 30, 2004, U.S.Gen New England, Inc. (USGen NE), Dominion Energy New England, Inc. and Dominion Energy Marketing Inc. submitted an application pursuant to section 203 of the Federal Power Act seeking authorization for USGen New England, Inc. to transfer certain wholesale power sales agreements to Dominion Energy Marketing, Inc.

Comment Date: 5 p.m. eastern time on January 21, 2005.

2. City of Anaheim, California

[Docket No. EL05–33–001]

Take notice that on December 30, 2004, the City of Anaheim, California (Anaheim) submitted corrections to its transmission revenue balancing account adjustment and to Appendix I of its transmission owner tariff filed in Docket No. EL05–33–000 on December 1, 2004. Anaheim requests an effective date of January 1, 2005.

Comment Date: 5 p.m. eastern time on January 14, 2005.

3. Atlantic City Electric Company, Potomac Electric Power Company, Delmarva Power & Light Company, Pepco Energy Services, Inc., Potomac Power Resources, LLC, Conectiv Energy Supply, Inc., Conectiv Atlantic Generation, LLC, Conectiv Delmarva Generation, Inc., Conectiv Bethlehem, LLC, Fauquier Landfill Gas, LLC, and Rolling Hills Landfill, LLC

[Docket Nos. ER96–1361–007, ER98–4138–003, ER99–2781–005, ER98–3096–009, ER01–202–002, ER00–1770–008, ER02–453–004, ER04–472–001, and ER04–529–001]

Take notice that on December 23, 2004, Atlantic City Electric Company, Potomac Electric Company, Delmarva Power & Light Company, Pepco Energy Services, Inc., Potomac Power Resources, LLC, Conectiv Energy Supply, Inc., Conectiv Atlantic Generation, LLC, Conectiv Delmarva

Generation, Inc., Conectiv Bethlehem, LLC, Fauquier Landfill Gas, LLC and Rolling Hills Landfill Gas, LLC submitted their triennial market power analysis pursuant to the Commission's order in *Arcadia Power Partners*, LLC, 107 FERC ¶ 61,168 (2004).

Comment Date: 5 p.m. eastern time on January 14, 2005.

4. Southern Company Energy Marketing L.P. and Southern Company Services, Inc.

[Docket Nos. ER97–4166–017 and ER96–780–007]

Take notice that on December 30, 2004, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company and Southern Power Company submitted a compliance filing pursuant to the Commission's Order issued December 17, 2004, in Docket No. ER97–4166–015, *et al.*, 109 FERC ¶ 61,275 (2004).

Comment Date: 5 p.m. eastern time on January 21, 2005.

5. J. Aron & Company and Power Receivable Finance, LLC

[Docket Nos. ER02–237–002 and ER03–1151–002]

Take notice that on December 30, 2004, J. Aron & Company and Power Receivable Finance, LLC (together, Applicants) filed a consolidated triennial updated market analysis.

Comment Date: 5 p.m. eastern time on January 21, 2005.

Applicants state that copies of the filing were served on the parties on the service lists in these proceedings.

6. ISO New England Inc.

[Docket No. ER02–2330–033]

Take notice that on December 30, 2004, ISO New England Inc. (ISO) submitted an Independent Assessment of Demand Response Programs as directed by the Commission in its Order issued June 6, 2003, in Docket No. ER02–2330–004, *et al.*, 103 FERC ¶ 61,304.

The ISO states that copies of the filing have been served on all parties in Docket No. ER02–2330.

Comment Date: 5 p.m. eastern time on January 21, 2005.

7. New England Power Pool and ISO New England Inc.

[Docket No. ER02–2330–034]

Take notice that on December 30, 2004, ISO New England Inc. (ISO) submitted a Status Report on Development of Day-Ahead Load Response Program as directed by the Commission in its November 17, 2003, Order in Docket No. ER02–2330–015, *et al.*, 105 FERC ¶ 61,211.

The ISO states that copies of the filing have been served on all parties in Docket No. ER02–2330.

Comment Date: 5 p.m. eastern time on January 21, 2005.

8. FirstEnergy Service Company

[Docket No. ER03–1276–003]

Take notice that on December 30, 2004, FirstEnergy Service Company (FirstEnergy) filed revised Notices of Cancellation of certain service agreements under the Open Access Transmission Tariff of American Transmission Systems, Incorporated, which has transferred operations control over its transmission system to the Midwest Independent Transmission System Operator, Inc. First Energy states that the revised Notices of Cancellation replace the Notices of Cancellation filed on December 21, 2004, in the above-referenced docket.

Comment Date: 5 p.m. eastern time on January 21, 2005.

9. New England Power Pool

[Docket No. ER03–345–004]

Take notice that on December 30, 2004, ISO New England, Inc. (ISO) submitted a Semi-Annual Status Report on Load Response Programs as directed by the Commission in the Order issued February 25, 2003, in Docket Nos. ER01–3086–001 and ER03–345–000, 102 FERC ¶ 61,202.

The ISO states that copies of the filing have been served on all parties to this proceeding.

Comment Date: 5 p.m. eastern time on January 21, 2005.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1312–005]

Take notice that on December 30, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a compliance filing pursuant to the Commission's January 29, 2004 Order in Docket Nos. ER03–1312–000 and 001, 106 FERC ¶ 61,073 (2004). Midwest ISO has requested a March 1, 2005, effective date for the tariff pages submitted in the compliance filing.

The Midwest ISO states that it has electronically served a copy of the filing on all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, and the state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site and that it will provide hard copies to any interested party upon request.

Comment Date: 5 p.m. eastern time on January 21, 2005.

11. Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.

[Docket No. ER04–375–017]

Take notice that on December 30, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C. (PJM), in compliance with the Commission's order issued March 18, 2004, in Docket No. ER04–375–000, 106 FERC ¶ 61,251, submitted revisions to the Joint Operating Agreement between the Midwest ISO and PJM. The Midwest ISO and PJM request an effective date of March 1, 2005.

The Midwest ISO and PJM state that copies of the filing were served on all persons on the service list in Docket No. ER04–375, all PJM members, and state electric utility regulatory commissions in the PJM regions and, in addition, the filing is available on the Midwest ISO internet site.

Comment Date: 5 p.m. eastern time on January 21, 2005.

12. Southern California Edison Company

[Docket Nos. ER04–1209–001, EL05–29–000, and ER05–410–000]

Take notice that on December 30, 2004, Southern California Edison Company (SCE) submitted proposed revisions to SCE's TO Tariff, FERC Electric Tariff, Second Revised Volume No. 6, Appendix VI, and to certain Existing Transmission Contracts (ETCs), to increase SCE's Reliability Services Revenue Requirement and Reliability Services rates.

SCE states that copies of the filing were served upon SCE's jurisdictional customers, the California Public Utilities Commission, the California Electricity Oversight Board, the California Independent System Operator, Pacific Gas and Electric Company, and the San Diego Gas and Electric Company.

Comment Date: 5 p.m. eastern time on January 21, 2005.

13. PJM Interconnection, L.L.C.

[Docket Nos. ER05–157–001, ER05–158–001, ER05–159–001, ER05–160–001, ER05–161–001, and ER05–162–001]

Take notice that on December 30, 2004, PJM Interconnection, L.L.C. (PJM) submitted its response to the Commission's deficiency letter issued

November 30, 2004, in Docket No. ER005–157–000, *et al.*, concerning six service agreements filed by PJM on October 29, 2004.

PJM states that copies of the filing were served on all parties in this proceeding.

Comment Date: 5 p.m. eastern time on January 21, 2005.

14. Illinois Power Company

[Docket No. ER05–173–001]

Take notice that on December 30, 2004, Illinois Power Company filed a request to withdraw its Notice of Withdrawal filed on December 22, 2004 in Docket No. ER05–173–000 and also submitted amended tariff sheets which would permit AmerenIP to sell electric energy at certain times between January 1, 2005, and December 31, 2006, at prices up to a cost-based cap of $30/MWh, the limited amounts of energy that it purchases in excess of its real-time energy needs.

Comment Date: 5 p.m. eastern time on January 21, 2005.

15. PJM Interconnection, L.L.C.

[Docket No. ER05–206–001]

Take notice that on December 30, 2004, PJM Interconnection, L.L.C. (PJM) filed a substitute Construction Service Agreement (CSA) among PJM, FPL Energy Marcus Hook, L.P. and Delmarva Power & Light Company d/b/a Conectiv Power Delivery superseding the CSA filed on November 12, 2004, in Docket No. ER05–206–000. PJM requests an effective date of October 14, 2004.

PJM states that copies of the filing were served on the parties to the agreement and the state regulatory commissions with the PJM region.

Comment Date: 5 p.m. eastern time on January 21, 2005.

16. Alliant Energy Corporate Services, Inc.

[Docket No. ER05–386–000]

Take notice that on December 28, 2004, Interstate Power and Light Company (Interstate) tendered for filing an Amendment Extending Term of Agreement extending the term of a 1980 joint use agreement between Interstate Power and Light Company and Central Iowa Power Cooperative. Interstate requests an effective date of December 31, 2004.

Comment Date: 5 p.m. eastern time on January 18, 2005.

17. Public Service Company of New Mexico

[Docket No. ER05–393–001]

Take notice that on December 30, 2004, Public Service Company of New Mexico (PNM) submitted for filing two separate Certificates of Concurrence with respect to the December 19, 2004 filing of the New Mexico Transmission Operating Procedures and the associated First Revised Restated Letter of Understanding, among El Paso Electric Company (EPE), PNM, Texas-New Mexico Power Company (TNMP) and Tri State Generation and Transmission Association, Inc. (Tri-State).

PNM states that copies of the filing have been provided to EPE, TNMP, Tri-State, the New Mexico Public Regulation Commission, and the New Mexico Attorney General.

Comment Date: 5 p.m. eastern time on January 21, 2005.

18. San Diego Gas & Electric Company

[Docket No. ER05–411–000]

Take notice that on December 28, 2004, San Diego Gas & Electric (SDG&E) tendered for filing a change in rate for the Transmission Revenue Balancing Account Adjustment and its Transmission Access Charge Balancing Account Adjustment as set forth in its Transmission Owner Tariff. SDG&E states that the effect of the rate change is to increase rates for jurisdictional transmission service utilizing that portion of the California Independent System Operator-controlled grid owned by SDG&E. SDG&E requests an effective date of January 1, 2005.

SDG&E states that copies of this filing were served upon the Public Utilities Commission of the State of California and on the California Independent System Operator Corporation.

Comment Date: 5 p.m. eastern time on January 18, 2005.

19. Southwest Power Pool, Inc.

[Docket Nos. RT04–1–008 and ER04–48–008]

Take notice that on December 30, 2004, Southwest Power Pool, Inc. (SPP) filed a timetable detailing the timeframe to remove rate pancaking from Schedule 1 of its Open Access Transmission Tariff, pursuant to the Commission's order issued October 1, 2004, in Docket Nos. RT04–1–001 and ER04–48–001, 109 FERC ¶ 61,010.

SPP states that it has served a copy of the filing on all parties in these proceedings and, in addition, states that a copy of this filing will be posted on the SPP Web site.

Comment Date: 5 p.m. eastern time on January 21, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to 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 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. E5–179 Filed 1–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF05–5011–000, et al.]

United States Department of Energy, et al.; Electric Rate and Corporate Filings

January 10, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. United States Department of Energy, Western Area Power Administration

[Docket No. EF05–5011–000]

Take notice that on November 22, 2004, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA–115, did confirm and approve on an interim basis, to be effective on January 1, 2005, the Western Area Power Administration

Rate Schedules CV–F11, for base resource and first preference power from the Central Valley Project (CVP), CPP–1 for custom product power, CV–T1 for firm and non-firm point-to-point transmission service on the CVP transmission system, CV–NWT3 for network integration transmission service on the CVP transmission system, CV–TPT6 for third-party transmission service, COTP–T1 for firm and Non-firm point-to-point transmission service on the California-Oregon Transmission Project, PACI–T1 for firm and Non-firm point-to-point transmission service on the Pacific Alternating Current Intertie, and CV–RFS3, CV–EID3, CV–SPR3, and CV–SUR3 for ancillary services for the CVP. Rate Order No. WAPA–115 also contains information on the Path 15 Transmission Upgrade.

The formula rates in Rate Schedules CV–F11, CPP–1, CV–T1, CV–NWT3, CV–TPT6, COTP–T1, PACI–T1, CV–RFS3, CV–EID3, CV–SPR3, and CV–SUR3 will be in effect pending the Federal Energy Regulatory Commission's approval of these or of substitute rates on a final basis, ending September 30, 2009.

Comment Date: 5 p.m. eastern time on January 31, 2005.

2. Entergy Services, Inc.

[Docket No. EL05–52–000]

Take notice that on January 3, 2005 Entergy Services, Inc., (Entergy) on behalf of the Entergy Operating Companies, filed pursuant to Commission Rule 207, 18 CFR 385.207, a Petition for Declaratory Order. Entergy states that the Petition requests guidance on important issues associated with Entergy's proposal to establish an Independent Coordinator of Transmission.

Comment Date: 5 p.m. eastern time on February 4, 2005.

3. Maine Public Service Company

[Docket No. ER00–1053–012]

Take notice that on December 30, 2004, Maine Public Service Company (MPS) submitted an amendment to its June 15, 2004 informational filing setting forth the changed open access transmission tariff charges effective June 1, 2004, together with back-up materials).

MPS states that copies of this filing were served on the parties to the Settlement Agreement in Docket No. ER00–1053–000, the Commission Trial Staff, the Maine Public Utilities Commission, the Maine Public Advocate, and current MPS open access transmission tariff customers.

Comment Date: 5 p.m. eastern time on January 21, 2005.

4. Delta Energy Center, LLC

[Docket No. ER03–510–004]

Take notice that on December 30, 2004, Delta Energy Center, LLC (Delta) submitted substitute revised rate schedule sheets to Delta's Rate Schedule FERC No. 2 to correct inadvertent errors contained in Delta's November 23, 2004, filing in Docket No. ER03–510–003. Delta requests an effective date of January 1, 2005.

Delta states that copies of the filing were served upon the official service list for this proceeding.

Comment Date: 5 p.m. eastern time on January 21, 2005.

5. Pacific Gas and Electric Company

[Docket No. ER03–1091–006]

Take notice that on December 30, 2004, Pacific Gas and Electric Company (PG&E) submitted a compliance filing pursuant to the Commission's letter order issued December 22, 2004 in Docket No. ER03–1091–005, 109 FERC ¶ 61,336 (2004).

PG&E states that copies of this filing were served upon Duke Energy Morro Bay, LLC, the California Independent System Operator Corporation, and the California Public Utilities Commission (CPUC).

Comment Date: 5 p.m. eastern time on January 21, 2005.

6. Delmarva Power & Light Company

[Docket Nos. ER04–509–004 and ER04–1250–003]

Take notice that on December 30, 2004, PJM Interconnection, L.L.C. (PJM) submitted for filing a response to the Commission's November 23, 2004, letter order regarding deficiencies in a compliance filing submitted by Delmarva Power & Light Company in Docket Nos. ER04–509–001 and ER04–1250–003.

PJM states that a copy of the filing has been served by U.S. Mail on all parties on the Commission's service list for this proceeding.

Comment Date: 5 p.m. eastern time on January 24, 2005.

7. PJM Interconnection, L.L.C.

[Docket No. ER04–608–002]

Take notice that on January 3, 2005, PJM Interconnection, L.L.C. (PJM) submitted for filing a status report of PJM's stakeholder process regarding expansion of PJM's behind the meter generation program to include generation associated with municipals' and cooperatives' electric distribution systems as required by the Commission's order issued May 6, 2004, in this proceeding, 107 FERC ¶ 61,113, *reh'g denied*, 108 FERC ¶ 61,302 (2004).

PJM states that a copy of this report has been served on all parties on the Commission's service list for this proceeding.

Comment Date: 5 p.m. eastern time on January 24, 2005.

8. PJM Interconnection, L.L.C.

[Docket No. ER05–12–001]

Take notice that on December 30, 2004, PJM Interconnection, L.L.C. (PJM), submitted a compliance filing pursuant to Commission's order issued November 30, 2004 issued in ER05–12–000, 109 FERC ¶ 61,241. PJM requests an effective date of December 1, 2004.

PJM states that copies of the filing were served on all persons on the service list in Docket No. ER05–12–000, as well as all PJM members, and each state electric utility regulatory commission in the PJM regions.

Comment Date: 5 p.m. eastern time on January 21, 2005.

9. American Electric Power Service Corporation

[Docket No. ER05–394–000]

Take notice that on December 30, 2004, the American Electric Power Service Corporation (AEPSC), tendered for filing an Interconnection and Local Delivery Service Agreement between AEPSC and Ormet Primary Aluminum Corporation (ORMET) designated as Original Service Agreement No. 568 under the Operating Companies of the American Electric Power System FERC Electric Tariff, Third Revised Volume No. 6. AEPSC requests an effective date of November 1, 2004.

AEPSC states that a copy of the filing was served upon ORMET and the Public Service Commission of Ohio.

Comment Date: 5 p.m. eastern time on January 21, 2005.

10. Central Maine Power Company

[Docket No. ER05–401–000]

Please take notice that on January 3, 2005, Central Maine Power Company (CMP) submitted the following entitlement agreements between CMP and Constellation Energy Commodities Group, Inc. (CECG): System Contract Entitlement Agreement, FERC Rate Schedule No. 202; Waste-to-Energy Entitlement Agreement, FERC Rate Schedule No. 203; Cogeneration Entitlement Agreement, FERC Rate Schedule No. 204; Nuclear Entitlement Agreement, FERC Rate Schedule No. 205; and Hydroelectric Entitlement Agreement, FERC Rate Schedule No. 206. CMP requests an effective date of March 1, 2005.

Comment Date: 5 p.m. eastern time on January 24, 2005.

11. Otter Tail Power Company

[Docket No. ER05–408–000]

Take notice that on January 3, 2005, Otter Tail Power Company (Otter Tail) submitted proposed amendments to the following agreements between Otter Tail and City of Newfolden, City of Nielsville, City of Shelly, State of Minnesota on behalf of State Hospital, State of North Dakota on behalf of Grafton State School, State of North Dakota on behalf of School of Forestry, State of North Dakota on behalf of School of Science, State of North Dakota on behalf of School for the Deaf, Fort Totten Indian Agency, Turtle Mountain Indian Agency, Oakes O&M Center, and Town of Badger. Otter Tail states that the proposed amendments are intended to allow for the reimbursement to Otter Tail for certain Midwest Independent Transmission System Operator, Inc. costs associated with the load of the Customers. Otter Tail requests an effective date of March 1, 2005.

Comment Date: 5 p.m. eastern time on January 24, 2005.

12. Southern California Edison Company

[Docket No. ER05–410–000]

Take notice that on December 30, 2004, Southern California Edison Company (SCE) submitted proposed revisions to SCE's TO Tariff, FERC Electric Tariff, Second Revised Volume No. 6, Appendix VI, and to certain Existing Transmission Contracts to increase SCE's Reliability Services Revenue Requirement and Reliability Services rates.

SCE states that copies of the filing were served upon SCE's jurisdictional customers, the California Public Utilities Commission, the California Electricity Oversight Board, the California Independent System Operator, Pacific Gas and Electric Company, and the San Diego Gas and Electric Company.

Comment Date: 5 p.m. eastern time on January 21, 2005.

13. Duke Energy Grays Harbor, LLC

[Docket No. ER05–418–000]

Take notice that on December 30, 2004, Duke Energy Grays Harbor, LLC (Duke Grays Harbor) submitted a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 1. Duke Grays Harbor requests an effective date of December 31, 2004.

Comment Date: 5 p.m. eastern time on January 21, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to 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 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. E5–191 Filed 1–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–111–031, et al.]

PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Filings

January 6, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PJM Interconnection, L.L.C.

[Docket No. EL02–111–031]

Take notice that on December 30, 2004, PJM Interconnection, L.L.C. (PJM), submitted a correction to the tariff revisions filed in this proceeding on November 24, 2004, to ensure that Schedule 13 of the PJM open access transmission tariff, fully complies with the Commission's November 18, 2004, order in this proceeding, 109 FERC ¶ 61,168. PJM states that the corrected sheet has an effective date from May 1, 2004, through November 30, 2004, corresponding to the period that Schedule 13 was effective.

PJM states that copies of this filing were served upon all persons on the service list in this docket, as well as all PJM members, and each state electric utility regulatory commission in the PJM region.

Comment Date: 5 p.m. eastern time on January 14, 2005.

2. Alpena Power Generation, L.L.C.

[Docket No. ER04–1004–003]

Take notice that on January 5, 2005, Alpena Power Generation, L.L.C. (Alpena Generation) tendered for filing an amendment to its July 9, 2004, filing, which was amended on August 27, 2004, and November 5, 2004, in response to the Commission's deficiency letter issued January 4, 2005.

Alpena Generation states that copies of the filing were served upon the public utility's jurisdictional customers and the Michigan Public Service Commission.

Comment Date: 5 p.m. eastern time on January 18, 2005.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–395–000]

Take notice that on December 30, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed an Interconnection and Operating Agreement among West Pipestone Transmission LLC, Northern States Power Company d/b/a Xcel Energy and the Midwest ISO. The Midwest ISO requests an effective date of December 15, 2004.

The Midwest ISO states that a copy of the filing was served on the parties to the Interconnection and Operating Agreement.

Comment Date: 5 p.m. eastern time on January 21, 2005.

4. MidAmerican Energy Company

[Docket No. ER05–396–000]

Take notice that on December 30, 2004, MidAmerican Energy Company (MidAmerican) filed a Network Integration Transmission Service Agreement and a Network Operating Agreement between MidAmerican and the Resale Power Group of Iowa (RPGI), as agent for the City of Hudson, Iowa. MidAmerican requests an effective date of January 1, 2005.

MidAmerican states that a copy of the filing has been served on RPGI, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment Date: 5 p.m. eastern time on January 21, 2005.

5. Alabama Power Company

[Docket No. ER05–398–000]

Take notice that on December 30, 2004, Southern Company Services, Inc. (SCS), on behalf of Alabama Power Company and Georgia Power Company filed a Transmission Facilities Agreement by and between Alabama Power Company and Georgia Power Company.

SCS states that copies of the filing were served on the Alabama Public Service Commission and the Georgia Public Service Commission.

Comment Date: 5 p.m. eastern time on January 21, 2005.

6. Savannah Electric and Power Company

[Docket No. ER05–399–000]

Take notice that on December 30, 2004, Southern Company Services, Inc. (SCS), on behalf of Savannah Electric and Power Company and Georgia Power Company, submitted a Transmission Facilities Agreement by and between Savannah Electric and Power Company and Georgia Power Company.

SCS states that a copy of the filing was served on the Georgia Public Service Commission.

Comment Date: 5 p.m. eastern time on January 21, 2005.

7. Pacific Gas and Electric Company

[Docket No. ER05–400–000]

Take notice that on December 30, 2004, Pacific Gas and Electric Company (PG&E) filed three Generator Special Facilities Agreements and three Generator Interconnection Agreements between PG&E and Tri-Dam Project of the South San Joaquin and Oakdale Irrigation District (Tri-Dam). PG&E requests an effective date of January 1, 2005.

PG&E states that copies of the filing were served on Tri-Dam, California Independent System Operator Corporation and the California Public Utilities Commission.

Comment Date: 5 p.m. eastern time on January 21, 2005.

8. New England Power Pool

[Docket No. ER05–403–000]

Take notice that on December 30, 2004, the New England Power Pool (NEPOOL) Participants Committee filed the One Hundred Tenth Agreement Amending New England Power Pool Agreement which modifies the Financial Assurance Policy for NEPOOL Members. NEPOOL requests a March 1, 2005, effective date.

The Participants committee states that copies of the filing were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: 5 p.m. eastern time on January 21, 2005.

9. Southern Company Services, Inc.

[Docket No. ER05–404–000]

Take notice that on December 30, 2004, Southern Company Services, Inc. (SCS), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively, Southern Companies) filed a network integrated transmission service agreement between SCS, as agent for Southern Companies and Generation Energy Marketing, a Department of Southern Company Services, Inc., as agent for Mississippi Power Company. SCS requests an effective date of December 1, 2004.

Comment Date: 5 p.m. eastern time on January 21, 2005.

10. California Independent System Operator Corporation

[Docket No. ER05–405–000]

Take notice that on December 30, 2004, the California Independent System Operator Corporation (ISO) filed the District Interim Operations Agreement between the ISO and Turlock Irrigation District to accommodate a planned change in Control Area boundaries related to the decision of the Western Area Power Administration—Sierra Nevada Region (Western) to join the Control Area of the Sacramento Municipal Utility District of (SMUD) as of January 1, 2005. The ISO requests an effective date of January 1, 2005.

The ISO states that the filing has been served on Western, SMUD, Pacific Gas and Electric Company, the California Public Utilities Commission, the California Electricity Oversight Board, and all entities on the official service list for Docket No. ER04–693.

Comment Date: 5 p.m. eastern time on January 21, 2005.

11. Williams Power Company, Inc.

[Docket No. ER05–406–000]

Take notice that on December 30, 2004, Williams Power Company, Inc. (Williams) submitted a Schedule F Information Filing under its Reliability Must-Run Service Agreements with the California Independent System Operator Corporation (ISO) for the Alamitos and Huntington Beach generating facilities. Williams also submitted revised tariff sheets reflecting the charges and rates contained in the Schedule F Information Filing.

Williams states that copies of the filing have been served on the ISO, the California Electricity Oversight Board, Southern California Edison Company, the California Public Utilities Commission and AES Southland, L.L.C.

Comment Date: 5 p.m. eastern time on January 21, 2005.

12. California Independent System Operator Corporation

[Docket No. ER05–407–000]

Take notice that on December 30, 2004, the California Independent System Operator Corporation (ISO) filed the MID Operations Agreement between ISO and Modesto Irrigation District (MID) between the ISO and MID to accommodate a planned change in Control Area boundaries related to the decision of the Western Area Power Administration—Sierra Nevada Region (Western) to join the Control Area of the Sacramento Municipal Utility District of (SMUD) as of January 1, 2005. The ISO requests an effective date of January 1, 2005.

The ISO states that the filing has been served on Western, SMUD, Pacific Gas and Electric Company, the California Public Utilities Commission, the California Electricity Oversight Board, and all entities on the official service list for Docket No. ER04–693.

Comment Date: 5 p.m. eastern time on January 21, 2005.

13. Wisconsin Public Service Corporation

[Docket No. ER05–409–000]

Take notice that on December 30, 2004, Wisconsin Public Service Corporation (WPSC) filed a depreciation cost study and revised depreciation rates for wholesale production service. WPSC requests an effective date of January 1, 2005.

WPSC states that copies of the filing were served on WPSC's affected wholesale customers, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment Date: 5 p.m. eastern time on January 21, 2005.

14. Southern Company Services, Inc.

[Docket No. ER05–413–000]

Take notice that on December 30, 2004, Southern Company Services, Inc. (SCS), acting as agent for Alabama

Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively, Southern Companies) filed a rollover transmission service agreement between Southern Companies and Progress Ventures, Inc. SCS requests an effective date of December 1, 2004.

SCS states that a copy of the filing has been sent to Progress Ventures, Inc.

Comment Date: 5 p.m. eastern time on January 21, 2005.

15. American Transmission Systems, Incorporated

[Docket No. ER05–414–000]

Take notice that on December 30, 2004, American Transmission System, Incorporated (ATSI) filed proposed revisions to its Open Access Transmission Tariff, FERC Electric Tariff, Third Revised Volume No.1, intended to correspond with changes in compensation provisions for energy imbalance service and for system losses that will be implemented when the Open Access Transmission and Energy Markets Tariff of Midwest Independent Transmission System Operator, Inc. becomes effective.

Comment Date: 5 p.m. eastern time on January 21, 2005.

16. Southwest Power Pool, Inc.

[Docket No. ER05–415–000]

Take notice that on December 30, 2004, Southwest Power Pool, Inc. (SPP) filed changes to the SPP Open Access Transmission Tariff intended to implement certain rate changes applicable to the Southwestern Power Administration pricing zone. SPP requests an effective date of January 1, 2005.

SPP states that copies of its transmittal letter has been served on each of its members and customers and that a complete copy of the filing will be posted on the SPP web site and served on all affected state commissions.

Comment Date: 5 p.m. eastern time on January 21, 2005.

17. California Independent System Operator Corporation

[Docket No. ER05–416–000]

Take notice that on December 30, 2004, the California Independent System Operator Corporation (ISO) submitted an informational filing as to the ISO's revised transmission Access Charge rates effective January 1, 2005, to implement the revised Transmission Revenue Balancing Accounts of the current Participating Transmission Owners.

The ISO states that the filing has been served on the California Public Utilities Commission, the California Energy Commission, the California Electricity Oversight Board, the Participating Transmission Owners, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. In addition, the ISO states that it is posting the filing on the ISO home page.

Comment Date: 5 p.m. eastern time on January 21, 2005.

18. Duke Energy Grays Harbor, LLC

[Docket No. ER05–417–000]

Take notice that on December 30, 2004, Duke Energy Grays Harbor, LLC (Duke Grays Harbor) submitted a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 1. Duke Grays Harbor requests an effective date of December 31, 2004.

Comment Date: 5 p.m. eastern time on January 21, 2005.

19. Southwest Power Pool, Inc.

[Docket No. RT04–1–009]

Take notice that on December 30, 2004, Southwest Power Pool, Inc. (SPP) filed a status report on its efforts to develop a transmission cost allocation plan pursuant to the Commission's order issued February 10, 2004, in this proceeding, 106 FERC ¶ 61,110 (2004). SPP states that it expects that the development process will be completed by the end of February 2005 and that a filing will be made within that timeframe.

SPP states that it has served a copy of its status report on all parties to this proceeding and that a copy of this filing will be posted on the SPP Web site *http://www.spp.org.*

Comment Date: 5 p.m. eastern time on January 21, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–192 Filed 1–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2244–012]

Energy Northwest; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping Meetings and Study Request Workshop, Solicitation of Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

January 12, 2005.

a. *Type of Filing:* Notice of intent to file license application for a new license and pre-application document; commencing licensing proceeding.

b. *Project No.:* 2244–012.

c. *Dated Filed:* November 12, 2004.

d. *Submitted by:* Energy Northwest.

e. *Name of Project:* Packwood Lake Hydroelectric Project.

f. *Location:* Packwood Lake Hydroelectric Project is located on Lake Creek and the Cowlitz River in Lewis County, Washington. The project occupies 503.25 acres of United States lands under the jurisdiction of the U.S. Forest Service.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Laura Schinnell, Licensing Project Manager, Mail Drop 1030, Energy Northwest, P.O. Box 968, Richland, WA, 99352, (509) 372–5123.

i. *FERC Contact:* Kenneth Hogan (202) 502–8434 or via e-mail at *Kenneth.hogan@ferc.gov.*

j. We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph o below.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. On March 10, 2004 and November 16, 2004, respectively, we designated Energy Northwest as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Energy Northwest filed a Pre-Application Document (PAD); including a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. Copies of the PAD and Scoping Document 1 (SD1) are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and SD1 as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Packwood Lake Hydroelectric Project) and number (P–2244–012), and bear the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by March 12, 2005.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link.

p. At this time, Commission staff intends to prepare an Environmental Assessment for the project, in accordance with the National Environmental Policy Act. However, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

We will hold two scoping meetings at the times and places noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date and Time: Thursday, February 3, 2005, 1 p.m. (PST).

Location: Packwood Lake Community Center, 12935 U.S. Highway 12, Packwood, Washington.

Evening Scoping Meeting

Date and Time: Thursday, February 3, 2005, 7 p.m. (PST).

Location: Packwood Lake Community Center, 12935 U.S. Highway 12, Packwood, Washington.

For Directions: Please call Laura Schinnell at (509) 372–5123.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, has been mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov*, using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Depending on the extent of comments received, a Scoping Document 2 (SD2) may or may not be issued.

Site Visit

A site visit is typically held in conjunction with the scoping meeting. However, anticipating that access to some project facilities would be limited by winter weather, Energy Northwest hosted a project site visit in August 2004. The site visit was noticed by the Commission on July 13, 2004 and attended by Commission staff on August 27, 2004. For these reasons, the Commission will not host its own site visit in conjunction with its NEPA scoping meeting.

Scoping Meeting Objectives

At the scoping meetings, staff will: (1) Present the proposed list of issues to be addressed in the EA; (2) review and discuss existing conditions and resource agency management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss requests by any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the Pre-Application Document in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and

SD1 are included in item n. of this document.

Scoping Meeting Procedures

The scoping meetings will be recorded by a stenographer and will become part of the formal Commission record on the project.

Study Request and Process Plan Workshop

To assist parties in the development of their study requests (pertaining to format and the study criteria outlined in the Commission's regulation 18 CFR 5.8), and further development of the project's Process Plan we will be hosting a workshop on February 2, 2005, at the U.S. Fish and Wildlife Service's Sawyer Hall at 510 Desmond Drive SE., Lacey, Washington. The workshop will begin at 9 a.m. (PST). For directions, please contact Laura Schinnell at (509) 372–5123.

Magalie R. Salas,

Secretary.

[FR Doc. E5–185 Filed 1–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7321–018]

Erie Boulevard Hydropower, L.P.; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

January 12, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* P–7321–018.

c. *Date filed:* November 26, 2004.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Macomb Project.

f. *Location:* On the Salmon River in Franklin County, near Malone, New York. This project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jerry L. Sabattis, Erie Boulevard Hydropower, L.P., 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2787.

i. *FERC Contact:* John Smith, (202) 502–8972 or *john.smith@ferc.gov*.

j. Deadline for filing motions to intervene and protests: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link. The Commission encourages electronic filings.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The existing Macomb Project consists of: (1) A 106-foot-long, 32-foot-high concrete gravity overflow-type dam having a spillway crest elevation of 570.7 feet above mean sea level; (2) a 38-foot-long, 25-foot-high intake structure along each bank; (3) a 6-foot-diameter, 60-foot-long, riveted-steel, gated waste tube along each bank; (4) a 14-acre reservoir with a net storage capacity of 14 acre-feet at the spillway crest elevation; (5) a 6.5-foot-diameter, 60-foot-long, riveted-steel, concrete-encased, gated pipeline along the left (south) bank; (6) a powerhouse containing one 1,000-kilowatt horizontal Francis turbine; (7) a 370-foot-long, 34.5-kilovolt transmission line; and (8) appurtenant facilities. The applicant estimates that the total average annual generation would be 5,660 megawatt hours.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link—select ''Docket #'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E5–186 Filed 1–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

January 12, 2005.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: January 19, 2005, 10 AM.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400. For a recorded listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

878th Meeting—Regular Meeting

January 19, 2005—10 a.m.

Administrative Agenda

Item No.; Docket No.; Company

A–1.
AD02–1–000, Agency Administrative Matters

A–2.
AD02–7–000, Customer Matters, Reliability, Security and Market Operations

A–3.
M005–1–000, Report on Compliance Evaluations for Standards of Conduct for Transmission Providers

Markets, Tariffs, and Rates—Electric

E–1.
RM05–4–000, Interconnection for Wind Energy and Other Alternative Technologies

E–2.
TX04–2–001, Nevada Power Company

E–3.
EL03–236–001, PJM Interconnection, L.L.C.
EL03–236–002, PJM Interconnection, L.L.C.
EL03–236–003, PJM Interconnection, L.L.C.
PL04–2–000, Compensation for Generating Units Subject to Local Market Power Mitigation in Bid-Based Markets

E–4.
Omitted

E–5.
Omitted

E–6.
Omitted

E–7,
Omitted

E–8.
Omitted

E–9.
ER05–109–000, Southwest Power Pool, Inc.

E–10.
ER04–1096–001, Southwest Power Pool, Inc.
ER04–1096–002, Southwest Power Pool, Inc.

E–11.
Omitted

E–12.
Omitted

E–13.
Omitted

E–14.
Omitted

E–15.
ER05–222–000, Diablo Winds, LLC
ER05–222–001 Diablo Winds, LLC

E–16.
ER05–325–000, Credit Suisse First Boston Energy, LLC
ER01–2656–002, Credit Suisse First Boston International
ER01–2656–003, Credit Suisse First Boston International
ER05–327–000, Credit Suisse First Boston International

E–17.
Omitted

E–18.
ER04–948–001, Detroit Edison Company, DTE East China, LLC and DTE River Rouge No. 1 LLC
ER04–948–002, Detroit Edison Company, DTE East China, LLC and DTE River Rouge No. 1 LLC

E–19.
Omitted

E–20.
RT04–1–006, Southwest Power Pool, Inc.
ER04–48–006, Southwest Power Pool, Inc.

E–21.
EL04–129–000, Central Iowa Power Cooperative v. Midwest Independent Transmission System Operator, Inc.

E–22.
EL05–31–000, Decatur Energy Center, LLC
QF01–103–003, Decatur Energy Center, LLC

E–23.
EL05–39–000, ANP Funding I, LLC v. ISO New England, Inc. and New England Power Pool

E–24.
Omitted

E–25.
Omitted

E–26.
TX96–4–001, Suffolk County Electrical Agency

E–27.
ER04–691–013, Midwest Independent Transmission System Operator, Inc.
ER04–106–006, Midwest Independent Transmission System Operator, Inc.
EL04–104–012, Public Utilities With Grandfathered Agreements in the Midwest ISO Region

E–28.
ER04–641–000, Duke Energy Lee, LLC
ER04–641–001, Duke Energy Lee, LLC
ER04–641–002, Duke Energy Lee, LLC

E–29.
ER04–738–000, Midwest Independent Transmission System Operator, Inc.
ER04–738–001, Midwest Independent Transmission System Operator, Inc.

E–30.
ER04–714–000, Florida Power & Light Company—New England Division

E–31.
ER04–638–000, Entergy Services, Inc.

E–32.
Omitted

E–33.
Omitted

E–34.
Omitted

E–35.
Omitted

E–36.
EL03–234–001, Nine Mile Point Nuclear Station, LLC v. Niagara Mohawk Power Corporation

E–37.
Omitted

E–38.
Omitted

E–39.
EL03–204–001, AES Somerset, LLC v. Niagara Mohawk Power Corporation

E–40.
Omitted

E–41.
Omitted

E–42.
ER04–835–004, California Independent System Operator Corporation
ER04–835–005, California Independent System Operator Corporation

E–43.
ER04–767–001, PacifiCorp
ER04–767–002, PacifiCorp

E–44.
Omitted

E–45.
ER04–691–011, Midwest Independent Transmission System Operator, Inc.
EL04–104–010, Public Utilities With Grandfathered Agreements in the Midwest ISO Region

E–46.
EC04–126–000, Northern Iowa Windpower II LLC

E–47.
ER93–465–033, Florida Power & Light Company
ER96–417–002, Florida Power & Light Company
ER96–1375–003, Florida Power & Light Company
OA96–39–010, Florida Power & Light Company
OA97–245–003, Florida Power & Light Company

E–48.
Omitted

E–49.
Omitted

Markets, Tariffs, and Rates—Gas

G–1.
RP04–92–001, Georgia Public Service Commission
RP04–92–002, Georgia Public Service Commission

G–2.
RP03–221–000, High Island Offshore System, L.L.C.

G–3.
RP04–201–002, ANR Pipeline Company
RP04–201–003, ANR Pipeline Company

G–4.
RP04–255–002, Columbia Gas Transmission Corporation

G–5.
RP04–398–001, East Tennessee Natural Gas, LLC
RP04–398–002, East Tennessee Natural Gas, LLC
CP01–415–018, East Tennessee Natural Gas, LLC

G–6.
RP03–542–001, Texas Eastern Transmission, LP
RP04–129–000, Texas Eastern Transmission, LP
RP04–359–000, Texas Eastern Transmission, LP

G–7.
RP04–565–002, Northwest Pipeline Corporation

Energy Projects—Hydro

H–1.
P–2543–063, Clark Fork and Blackfoot, LLC
P–2543–065, The Montana Power Company

H–2.
Omitted

H–3.
P–12522, Green Island Power Authority

H–4.
Omitted

H–5.

Omitted
H–6.
P–2100–129, California Department of Water Resources
H–7.
P–2169–020, Alcoa Power Generating, Inc.

Energy Projects—Certificates

C–1.
CP04–60–000, Tennessee Gas Pipeline Company
C–2.
CP04–340–000, Southern Natural Gas Company
C–3.
CP97–169–004, Alliance Pipeline, L.P.
C–4.
CP04–101–000, Columbia Natural Resources, LLC
C–5.
CP05–5–000, Questar Pipeline Company
C–6.
CP05–28–000, Seafarer U.S. Pipeline System Inc.

Magalie R. Salas,
Secretary.

The Capitol Connection offers the opportunity for remote listening and viewing of the meeting. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu and click on ''FERC''*.

[FR Doc. 05–1108 Filed 1–14–05; 11:33 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

January 12, 2005.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: January 19, 2005 (Within a relatively short time after the Commission's open meeting on January 19, 2005).

PLACE: Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public, Investigations and Inquiries, Enforcement Related Matters, and Security of Regulated Facilities.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary. Telephone (202) 502–8400.

Chairman Wood and Commissioners Brownell, Kelliher, and Kelly voted to hold a closed meeting on January 19, 2005. The certification of the General Counsel explaining the action closed the meeting is available for public inspection in the Commission's Public reference room at 888 First Street, NW., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present. Staff from the Federal Trade Commission is expected to attend the meeting.

Magalie R. Salas,
Secretary.

[FR Doc. 05–1109 Filed 1–14–05; 11:33 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0334; FRL–7686–1]

Carbon Dioxide; Tolerance Reassessment Decision for Low Risk Pesticide; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Tolerance Reassessment Decision (TRED) for the pesticide carbon dioxide, and opens a public comment period on this document, related risk assessments, and other support documents. EPA has reviewed the low risk pesticide carbon dioxide through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide tolerance reassessment and reregistration decisions. Through the tolerance reassessment program, EPA is ensuring that all pesticides meet current health and food safety standards.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0334, must be received on or before March 21, 2005.

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: Mark Perry, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8024; fax number: (703) 308–7070; e-mail address: *perry.mark@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. 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 ID number OPP–2004–0334. 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/*.

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 OPP–2004–0334. 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 OPP–2004–0334. 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) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0334.

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 OPP–2004–0334. 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 5st 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 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 docket ID 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. Background

A. What Action is the Agency Taking?

EPA has reassessed the uses of carbon dioxide, reassessed existing tolerances or legal residue limits, and reached a tolerance reassessment decision for this low risk pesticide. The Agency is issuing for comment the resulting Report on Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Interim Risk Management Decision for carbon dioxide, known as a TRED, as well as related risk assessments and technical support documents.

As a pesticide active ingredient, carbon dioxide is used indoors as a fumigant to control insects in stored food and feed by displacing oxygen in the container's atmosphere. It does not accumulate in treated raw agricultural commodities, but rather diffuses into the atmosphere following application. Currently there are four registered end-use products containing carbon dioxide as the active ingredient, as well as one experimental-use and one special local needs registration. As a pesticide inert ingredient, carbon dioxide is used as an aerosol propellant.

EPA developed the carbon dioxide TRED through a modified, streamlined version of its public process for making tolerance reassessment and reregistration eligibility decisions. Through these programs, the Agency is ensuring that pesticides meet current standards under the Federal Food, Drug, and Cosmetic Act (FFDCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by FQPA. EPA must review tolerances and tolerance exemptions that were in effect when the FQPA was enacted, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the carbon dioxide tolerances included in this notice.

In reassessing tolerances, EPA must consider the cumulative effects of pesticides that have common mechanisms of toxicity. After assessing cumulative risks, the Agency will finalize decisions for carbon dioxide and other pesticides. Risk mitigation may be required for carbon dioxide at that time.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** of May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like carbon dioxide, which pose few risk concerns, have low use, and require no risk mitigation. Once EPA assesses uses and risks for such pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings. The Agency therefore, is issuing the low risk carbon dioxide TRED, risk assessments, and related documents simultaneously for public comment.

The tolerance reassessment program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Carbon dioxide, however, poses few/no risks that require mitigation. The Agency therefore, is issuing the carbon dioxide TRED, its risk assessments, and related support documents simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the TRED. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. The comments will become part of the Agency Docket for Carbon Dioxide; Tolerance Reassessment Decision for Low Risk Pesticide; Notice of Availability. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the docket and electronic Edocket. If any comment significantly affects the document, EPA also will publish an amendment to the TRED in the **Federal Register**. In the absence of substantive comments requiring changes, the decisions reflected in the TRED will be implemented as presented. These decisions may be supplemented by further risk mitigation measures when EPA concludes its cumulative assessment of the pesticides.

B. What is the Agency's Authority for Taking this Action?

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subject

Environmental protection, Pesticides and pests.

Dated: January 11, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–1027 Filed 1–18–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0335; FRL–7685–7]

D-Limonene; Reregistration Eligibility Decision for Low Risk Pesticide; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide D-Limonene, and opens a public comment period on this document, related risk assessments, and other support documents. EPA has reviewed the low risk pesticide D-Limonene through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket ID number OPP–2004–0335, must be received on or before March 21, 2005.

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: Mark Perry, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8024; fax number: (703) 308–8024; e-mail address: *perry.mark@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. 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 OPP–2004–0333. 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/*.

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 on 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 OPP–2004–0333. 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–epa.gov*, Attention: Docket ID number OPP–2004–0335. 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) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0335.

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 OPP–2004–0335. 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 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 docket ID 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. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. Using a modified, streamlined version of its public participation process, EPA has completed a RED for the low risk pesticide, D-Limonene under section 4(g)(2)(A) of FIFRA. EPA has determined that the data base to support reregistration is substantially complete and that products containing D-Limonene will be eligible for reregistration, provided the risks are mitigated either in the manner described in the RED or by another means that achieves equivalent risk reduction. Upon submission of any required product-specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address any concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing D-Limonene.

D-limonene has a lemon-like flavor and smell, and occurs naturally in citrus and certain fruits, vegetables, meats and spices. D-limonene is used as both an active and inert ingredient in pesticide products, and as an ingredient in food products, soaps and perfumes. As an active ingredient, it is used as an insecticide, insect repellant, and animal (dog and cat) repellent. As a pesticide inert ingredient it is used as a solvent or fragrance. It is also found in consumer products such as certain foods, soaps, and perfumes. The Food and Drug Administration (FDA) considers D-limonene to be generally recognized as safe (GRAS) as a food additive when used as a synthetic flavoring substance and adjuvant (21 CFR 182.60). D-limonene is not registered for food or feed crop uses as an active ingredient, but can be used on compost and manure.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the D-Limonene tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like D-Limonene, which pose no risk concerns, have low use, affect few if any stakeholders, and require no risk mitigation. Once EPA assesses uses and risks for such pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings. The Agency therefore is issuing the low risk D-Limonene RED, risk assessments, and related documents simultaneously for public comment.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. D-Limonene, however, poses no risks that require mitigation. The Agency, therefore, is issuing the D-Limonene RED, its risk assessments, and related support materials simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for D-Limonene. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and electronic Edocket. If any comment significantly affects the document, EPA will also, publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the D-Limonene RED will be implemented as it is now presented.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 17, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–1026 Filed 1–18–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0333; FRL–7685–8]

Nitrogen; Reregistration Eligibility Decision for Low Risk Pesticide; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide nitrogen, and opens a public comment period on this document, related risk assessments, and other support documents. EPA has reviewed the low risk pesticide nitrogen through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket ID number OPP–2004–0333, must be received on or before March 21, 2005.

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: Mark Perry, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8024; fax number: (703) 308–7070; e-mail address: *perry.mark@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. 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 OPP–2004–0333. 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/*.

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 OPP–2004–0333. 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 OPP–2004–0333. 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) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0333.

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 OPP–2004–0333. 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 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 docket ID 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. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. Using a modified, streamlined version of its public participation process, EPA has completed a RED for the low risk pesticide, nitrogen under section 4(g)(2)(A) of FIFRA. EPA has determined that the data base to support reregistration is substantially complete and that products containing nitrogen will be eligible for reregistration, provided the risks are mitigated either in the manner described in the RED or by another means that achieves equivalent risk reduction. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address any concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing nitrogen.

Nitrogen is used commercially to generate an inert atmosphere usually for product packaging. In the food industry, it is used to preserve packaged foods, such as ground coffee, by displacing oxygen. As a pesticide active ingredient, nitrogen may be used as a fumigant to control insects in structures and on stored food commodities. Currently there is only one registered end-use product containing nitrogen as the active ingredient. As a pesticide inert it is used as an aerosol propellant.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the nitrogen tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the Federal Register on May 14, 2004, explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like nitrogen, which pose no risk concerns, have low use, affect few if any stakeholders, and require little/no risk mitigation. Once EPA assesses uses and risks for such pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings. The Agency therefore is issuing the low risk nitrogen RED, risk assessments, and related documents simultaneously for public comment.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Nitrogen, however, poses no risks that require mitigation. The Agency therefore is issuing the nitrogen RED, its risk assessments, and related support materials simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for nitrogen. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and electronic Edocket. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the nitrogen RED will be implemented as it is now presented.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 17, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–1025 Filed 1–18–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0297; FRL–7690–5]

[S,S]-Ethylene diamine disuccinic acid; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0297, must be received on or before February 18, 2005.

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: Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address: *gandhi.bipin@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 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 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 ID number OPP–2004–0297. 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/*.

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.

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. 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 OPP–2004–0297. 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 OPP–2004–0297. 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) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0297.

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 OPP–2004–0297. 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. Make sure to submit your comments by the deadline in this notice.
7. 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. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 29, 2004.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

The Associated Octel Company, Limited

PP 4E6818

EPA has received a pesticide petition (4E6818) from The Associated Octel Company, Limited, P.O. Box 17, Oil Sites Road, Ellesmere Port, South Wirral L65 4HF, United Kingdom proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for [S,S]-ethylene diamine disuccinic acid, CAS Reg. No. 20846–91–7. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition.

Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. [S,S]-Ethylene diamine disuccinic acid is a chelating agent that is used as a vehicle to deliver micronutrients essential for healthy and rapid growth, such as iron and cobalt, to plants. It is unknown whether or not plants would uptake [S,S]-ethylene diamine disuccinic acid that might leach into the soil when applied as a minor component of pesticide formulations. However, organic chelating agents are not absorbed normally by growing plants. It appears that the primary role the chelate plays is to hold the metallic cations near the root surface until direct absorption of the free cation can take place. Once the micronutrient cations are inside the plant, other organic chelates (such as citrates) may be carriers of these cations to different parts of the plant (Ref. 1). Therefore, it is unlikely that [S,S]-ethylene diamine disuccinic acid would accumulate within plant tissue through its application to the soil as a minor component of pesticide formulations.

2. *Analytical method*. An analytical method has not been proposed because [S,S]-ethylene diamine disuccinic acid residues harmful to plants and animals are highly unlikely to occur when it is applied as part of the proposed pesticide formulation and according to that formulation's label directions for use.

3. *Magnitude of residues*. A waiver of the residue data has been requested because [S,S]-ethylene diamine disuccinic acid is produced by actinomycetes, *Amycolatopis japonica sp. nov.* (Ref. 2) and *Amycolatopsis orientalis* (Ref. 3), which are naturally occurring bacteria, degrades rapidly and is completely mineralized in the soil, will have limited accessibility to plants in the proposed use pattern, and exhibits low mammalian toxicity. [S,S]-Ethylene diamine disuccinic acid is a siderophore produced by actinomycetes, and it functions symbiotically with plants to assist in the transport of soil metals to plant rootlets. The use of [S,S]-ethylene diamine disuccinic acid, therefore, does not constitute the addition of a foreign material to the soil; rather, it is a compound that soil microorganisms and plants already encounter. Natural mechanisms already exist for the degradation and/or utilization of [S,S]-ethylene diamine disuccinic acid in the soil/plant microsystem. Moreover, organic chelates are not absorbed normally by growing plants, and residues are not expected in plants.

B. Toxicological Profile

1. *Acute toxicity*. The acute toxicity of [S,S]-ethylene diamine disuccinic acid was studied in several studies using male and female rats via the oral, dermal, and inhalation routes. In two acute oral toxicity studies, the lethal dose $(LD)_{50}$ for both males and females was established at >2,700 milligrams/kilogram body weight (mg/kg bwt) and >2,000 mg/kg bwt, respectively, which were the highest dose levels tested. For the two acute dermal toxicity studies, the LD_{50} for both males and females was established at >2,640 mg/kg bwt and > 2,000 mg/kg bwt, respectively, which were the highest dose levels tested. For the acute inhalation study, the lethal concentration $(LC)_{50}$ was established at >1.49 milligrams/liter (mg/L), which was the highest concentration that could be produced using the procedures prescribed. [S,S]-Ethylene diamine disuccinic acid also was studied in several primary eye irritation, primary skin irritation, and dermal sensitization studies. In two primary eye irritation studies, two primary skin irritation studies and a 24–hour repeat application patch test, the substance was considered a non-irritant. In a dermal sensitization study and a human repeat insult patch test, the substance was found not to be a dermal sensitizer.

2. *Genotoxicty*. [S,S]-Ethylene diamine disuccinic acid was shown not to be genotoxic in a battery of standard short-term studies. In a bacterial mutation assay, it was concluded that, when tested at dose levels up to 5,000 µg/plate of histidine dependent auxotrophic mutants of *Salmonella typhimurium* in water, [S,S]-ethylene diamine disuccinic acid was not mutagenic. In a Salmonella/mammalian (Ames test) and *Escherichia coli* WP2 mutagenesis assay, [S,S]-ethylene diamine disuccinic acid was tested using tester strains TA98, TA100, TA1535, TA1537, TA1538, WP2 uvrA (pHM101), and WP2 (pHM101) in the presence and absence of Aroclor-induced rat liver microsomal enzymes at a maximum dose of 5,000 µg per plate and was found not to cause a positive response. Further, [S,S]-ethylene diamine disuccinic acid was tested in a L5178Y TK+/- mouse lymphoma mutagenesis assay in the absence and presence of aroclor induced rat liver S-9, using doses of 4,028 to 2,765 µg/mL in the initial assay and 5,028 to 2,765 µg/mL in the confirmatory assay, and was found to be negative in both the absence and presence of exogenous metabolic activation. In an *in vitro* cytogenetics assay with Chinese hamster ovary (CHO) cells, in both definitive and confirmatory assays, the test system was exposed to dose levels of 79, 157, 313, 625, 1,250, 2,500, and 5,000 µg/mL for 6 hours with a 12–hour recovery period in the absence and presence of an S-9 reaction mixture. In addition, the test system was exposed to 5, 10, 20, 40, 79, 157, 313, 625, and 1,250 µg/mL continuously for 42 hours in the absence of a S-9 reaction mixture. In the definitive assay, survival at the highest dose level was scored 82% in the non-activated 6–hour treatment study, 70% in the non-activated 18–hour treatment study, 38% in the non-activated 42–hour study, and 84% in the S-9 activated study. The three highest doses with 200 scorable metaphase cells, i.e., 313, 625, and 1,250 µg/mL in the 6–hour non-activated study, 157, 313, and 625 µg/mL in the 6–hour activated study, and 5, 10, and 20 µg/mL in the 42–hour non-activated study, were selected for microscopic analysis. The test article did not induce a significant increase in structural chromosome aberrations in either the absence or presence of S-9 activation, regardless of the treatment condition or harvest time ($p \geq 0.025$, Fisher's exact test). However, in the non-activated 18–hour treatment study, there were no scorable metaphase cells in any of the test article dose groups. In addition, there was a statistically significant increase in numerical aberrations in the non-activated 42–hour study at 20 µg/mL ($p < 0.025$, Fisher's exact test). There was also a statistically significant dose response in numerical aberrations in the non-activated 42–hour study ($p < 0.05$, Cochran-Armitage test). In the confirmatory assay, survival at the highest dose level scored was 78% in the non-activated 6–hour treatment study, 77% in the non-activated 18–hour study, 29% in the non-activated 42–hour treatment study, and 109% in the S-9 activated study. The three highest doses with 200 scorable metaphase cells, i.e., 157, 313, and 625 µg/mL in the 6–hour treatment study, 313, 625, and 1,250 µg/mL in the 18–hour non-activated study, and 10, 20, and 40 µg/mL in the non-activated 42–hour study, were selected for microscopic analysis. The test article did not induce a significant increase in structural or numerical chromosome aberrations in either the absence or presence of S-9 activation in the 6–hour or 18–hour treatment studies ($p \geq 0.025$, Fisher's exact test). There was a statistically significant increase in structural chromosome aberrations at the 40 µg/mL dose level in the non-activated 42–hour study ($p < 0.025$, Fisher's exact test) and a statistically

significant dose response ($p<0.05$, Cochran-Armitage test). This increase in the percentage of structural chromosome aberrations in this dose was within the acceptable range of the historical control values, and therefore this increase was not viewed as being biologically relevant. Last, in an *in vivo* cytogenetic assay in rats, male and female Sprague-Dawley rats were treated with [S,S]-ethylene diamine disuccinic acid by single-dose gavage administration of 200, 670, or 2,000 mg/kg bwt. The percentage of structurally damaged first division metaphase cells was not significantly increased in the test-article-treated groups, regardless of sex, dose, or sacrifice time ($p\leq0.025$, Fisher's exact test). The percentage of numerically changed second division metaphase cells was not significantly increased in the test-article-treated groups, regardless of sex, dose, or sacrifice time ($p>0.025$, Fisher's exact test). It was concluded that [S,S]-ethylene diamine disuccinic acid was negative in the *in vivo* cryogenic assay in rats.

3. *Reproductive and developmental toxicity*. Two range-finding developmental toxicity studies, two developmental toxicity studies and one plasma mineral level study were conducted with rats. In the first range-finding study, mated Charles River CRl:CD VAF/Plus female rats were administered 2,000, 8,000, 16,000, 24,000, and 40,000 parts per million of the test substance in the diet on gestation days 6 through 15. Maternal toxicity resulted at the 16,000 ppm level and higher, as evidenced by two test article-related deaths at the highest dose level, test article-related emaciation, soft stool, decreased defacation and no stool, and inhibited bodyweight gain, body weight loss, and dose-related decreases in food consumption when compared with the control group. Developmental toxicity was evidenced at 16,000 ppm by reduced gravid uterine weight and at doses of 24,000 ppm and above by increases in post-implantation loss when compared with the controls, and a concomitant decrease in the numbers of live fetuses. Developmental toxicity also was evidenced from the fetuses found to be severely malformed in the 24,000 ppm group. Based on the results of this study, dosage levels of 0, 2,000, 8,000, and 16,000 ppm were selected by the sponsors for the definitive developmental toxicity study. In the second range-finding study, mated Charles River Crl:CD VAF/Plus female rats were administered dosage levels of the test article of 0, 50, 200, 400, 600, and 1,000 mg/kg/day by gavage on gestation days 6 through 15. There were no significant observations of maternal toxicity at any dosage level. No indication of developmental toxicity was observed at the dose levels tested. The study's conclusion was the dose levels evaluated produced no apparent maternal or developmental toxicity that was test article related. In the first developmental toxicity study, mated Charles River Crl:CD VAF/Plus female rats were administered dosage levels of 2,000, 8,000, and 16,000 ppm of the test substance in their diet on gestation days 6 through 15. Maternal toxicity was evidenced at the high-dose level by body weight and food consumption inhibition as compared with the control group. Blood zinc levels were decreased in all treated groups, and iron and copper levels were reduced in the high-dose treated dams. Developmental toxicity was indicated by a statistically significant increase in post-implantation losses at the high-dose level. Post-implantation losses at the high-dose appeared to selectively affect the sex ratio and, as a consequence, the percentage of live male fetuses was reduced while the percentage of live female fetuses was increased. Developmental toxicity also was indicated for the high-dose group by reduced fetal body weights. Administration of the test article resulted in teratogenicity in the majority of fetuses and litters at a concentration of 16,000 ppm. Fetuses from this group were observed with singular or multiple external, visceral and/or skeletal malformations and developmental variations. All major organ systems and skeletal structures were affected. The developmental period affected covers the entire dose administration period; therefore, the results of the study indicate the test article is a non-selective teratogen capable of producing a variety of malformations and developmental changes. A depletion of one or more metals in the blood, most likely zinc, may be correlated with these changes. In conclusion, the no observed adverse effect level (NOAEL) for the test substance when administered orally via the diet to the mated rats was 8,000 ppm with regard to maternal toxicity and developmental toxicity. In the second developmental toxicity study, the test substance was administered to mated Charles River Crl:CD VAF/Plus female rats by oral gavage at dose levels of 0, 50, 400, and 1,000 mg/kg/day on gestation days 6 through 15. Maternal toxicity was indicated at the 1,000 mg/kg/day dose level by a significant reduction in mean carcass weights, a significant reduction in food consumption, and an increased incidence of clinical observations; therefore, the NOAEL was considered to be 400 mg/kg/day. Developmental toxicity was not indicated at any dose level evaluated, and the NOAEL with respect to developmental toxicity was considered greater than 1,000 mg/kg/day. The plasma mineral levels in pregnant rats were evaluated. In this study, mated Charles River Crd:CD VAF/Plus female rats were used to determine the effect of the test substance on plasma levels of zinc, iron and copper in pregnant rats. Dose levels of 50, 400, and 1,000 mg/kg/day were administered by gavage as a single daily dose on gestation days 6 through 15 at a volume of 10.0 mL/kg. This resulted in maternal toxicity at the 1,000 mg/kg/day dose level, as indicated by soft stool and reduced (non-statistically significant) weight gain during the treatment period. Treatment also resulted in a dose-dependant, statistically significant reduction in zinc plasma levels for all dose groups at both the 2 and 4 hour-time points, as compared with the control group, and a statistically significant dose-dependant reduction in plasma copper levels in all treated groups at 4 hours and at the two highest dose levels at 2 hours. Plasma levels of iron fluctuated in all treated groups at both the 2 and 4 hour-time points, as compared with the control group, and these changes were not considered due to treatment with the test article. Oral administration of the test article at dosages of 50, 400, and 1,000 mg/kg/day during gestation days 6 to 15 resulted in a dose-dependant reduction in plasma zinc and copper in samples obtained 2 and 4 hours after the last dose on gestation day 15. Plasma iron levels were reduced in the 50 and 400 mg/kg/day groups in a dose-dependant fashion, as compared with the control group, from samples obtained at 2 and 4 hours following the last dose on gestation day 15. This trend was not observed at the 1,000 mg/kg/day dosage, and there was no treatment-related effect on plasma iron levels at this dose level. Administration of the test article during the period of gestation days 6 to 15 effectively lowered the plasma levels of zinc and copper in a dose-related fashion. There was no dose-related effect in plasma iron levels attributable to administration of the test article.

4. *Subchronic toxicity*. Several short-term studies were conducted using male and female rats. In a 14–day oral feeding study, one control and four dose groups of male and female Wistar rats were administered 0, 50, 500, 2,500, and

5,000 mg/kg/bwt/day of the test substance. In Group 5, the highest dose group, one male was found dead on day 9 of treatment. In groups 1, 2, 3, and 4, no deaths occurred. Test article related clinical signs of reaction to treatment with the test substance were noted in Group 5 before death or sacrifice; ruffled fur, diarrhea, emaciation, hunched posture, and sedation were noted. In Group 4, ruffled fur, diarrhea, emaciation and hunched posture were noted in both male and female animals at the end of the first week and during the second week. No clinical signs or symptoms of ill health were noted in the animals of Groups 1, 2, or 3. In a second 14–day oral feeding study with SFR-bred male Wistar rats administered dose levels of 0, 750, 1,000, and 1,250 mg/kg/bwt/day, all animals survived until scheduled necropsy, and no test article related clinical signs were evident in any animal. The mean food consumption, body weight development and relative food consumption were unaffected by the test article. Based on the results of this study, the no observed effects level (NOEL) was considered to be above 1,250 mg/kg/bwt/day. In a sub chronic 13–week oral (feeding) toxicity study, male and female SPF-bred Wistar rats were fed nominal dose levels of the test substance of 0, 50, 300, 700, and 1,000 mg/kg/bwt/day. Based on the results, the NOEL of the test substance was considered to be 300 mg/kg/bwt/day. A mineral balance 28–day oral toxicity (feeding) study using male rats fed dose levels of the test substance of 0, 50, 150, 300, and 400 mg/kg/bwt/day was conducted. Up to and including the highest dose level, there were no test article-related death or sign of reaction to treatment. Food and water consumption were not affected by treatment with the test article. The clinical laboratory data, opthalmoscopic examination as well as the recording of organ weights gave no indication of test article related effects. At macroscopic and microscopic examinations, no treatment-related histopathologic alterations in any of the organs or tissues examined were noted. There were no statistically significant changes in body weight or body weight gain. However, there was a trend towards a decreased body weight and body weight gain as the dose increased. The increased urinary output of minerals (Cu, Zn, Mg) was considered to be test article-related. This increase in urinary output was compensated by a decrease in fecal elimination of the respective minerals. There was no effect on total mineral output relative to control values. Tissue mineral (Cu, Zn, Mg) levels were not affected in the sternum, femur or liver. In the kidneys there was a statistically significant decrease in tissue Zn levels for two test groups. The lack of a dose-response effect did not allow for a definitive statement, but in consideration of the effects of treatment on Zn elimination, a test article-related effect was not ruled out.

5. *Chronic toxicity*. [S,S]-ethylene diamine disuccinic acid and its metabolites are not structurally related to a recognized carcinogen, and the weight-of-the-evidence from the reported genotoxicity and subchronic toxicity studies indicates that [S,S]-ethylene diamine disuccinic acid is not mutagenic and does not produce a morphologic effect in any organ that could lead to neoplastic change.

6. *Animal metabolism*. The absorption, distribution and elimination of [S,S]-ethylene diamine disuccinic acid were evaluated in three studies. In the first study, succinate-14C(U)-[S,S]-ethylene diamine disuccinic acid sodium salt at 2,106 mg/kg was administered to male Wistar rats by oral (gavage) dosing. This resulted in increased levels of radioactivity in bone marrow over the first 24 hours followed by biphasic elimination. The identity of the radioactivity in tissues was not determined. The mean peak bone marrow radioactivity level was 37 µg [S,S]-ethylene diamine disuccinic acid sodium salt equivalents/g (ppm) at the 24–hour time point. Bone marrow radioactivity levels declined thereafter to 10 ppm at the end of the 72–hour study period. Results of this study demonstrate that bone marrow is exposed to [S,S]-ethylene diamine disuccinic acid and/or its metabolites following oral (gavage) dosing under conditions similar to those employed in *in vivo* cytogenics studies. In the second study, female Wistar rats were dosed orally (gavage) with succinate-14C-(U)-S,S-[S,S]-ethylene diamine disuccinic acid sodium salt at 2053 mg/kg. This resulted in elevated levels of radioactivity in bone marrow during the 72–hour study period. The identity of the radioactivity in tissues was not determined. The highest mean bone marrow radioactivity level was 14 µg [S,S]-ethylene diamine disuccinic acid sodium salt equivalents/g (ppm) at the 24–hour time point. Bone marrow radioactivity declined slowly thereafter to 5 ppm at the end of the 72–hour period. Results of this study demonstrate that bone marrow is exposed to [S,S]-ethylene diamine disuccinic acid and/or its metabolites following oral (gavage) dosing under conditions similar to those employed in *in vivo* cytogenics studies. In the third study, groups of male and female Wistar rats were administered 14C-[S,S]-[S,S]-ethylene diamine disuccinic acid sodium salt by oral gavage and dermal application. Target dosing for the groups varied between 10.0 ± 0.3 uCi/rat and 18.6 ± 0.5 uCi/rat. After oral administration of 14C-[S,S]-[S,S]-ethylene diamine disuccinic acid sodium salt, radioactivity was rapidly eliminated, mainly via the feces. Based on the recovery of radioactivity in the urine, expired air and tissues, the oral absorption was less than approximately 5% of the dose in both gender groups. Based on the radioactivity recoveries in the excreta and the residue tissue content, approximately 11.1% of the applied dermal dose of 14C-[S,S]-[S,S]-ethylene diamine disuccinic acid sodium salt was absorbed by males and 5.18% was absorbed by females. During dermal exposure of 14C-[S,S]-[S,S]-ethylene diamine disuccinic acid sodium salt, the amount of radioactivity eliminated in the excreta of both gender groups was less than 9% of the dose. There was an apparent gender effect in the amount of absorbed radioactivity eliminated in the excreta for urine only. There was no statistically significant gender effect in the oral or dermal absorption of radioactivity on the basis of the radioactivity recoveries in the excreta and tissue. The overall recovery of radioactivity after oral administration of 14C-[S,S]-[S,S]-ethylene diamine disuccinic acid sodium salt was 84.4 ± 1.52% (males) and 89.5 ± (females) and after dermal application was 59.1 ± 8.03% (males) and 62.8 ± 18.6% (females) of the dose. There was no statistically-significant difference in the radioactivity recoveries between the male and female animals after both routes of administration.

7. *Metabolite toxicology*. [S,S]-Ethylene diamine disuccinic acid occurs in nature and is a siderophore produced by the Actinomycetes, *Amycolatopis japonica* sp. nov. (Ref. 2) and *Amycolatopsis orientalis* (Ref 3). [S,S]-Ethylene diamine disuccinic acid is rapidly and completely mineralized (Ref. 4). The degradation pathway of [S,S]-ethylene diamine disuccinic acid is not fully understood. However, the catabolism of [S,S]-ethylene diamine disuccinic acid was initiated by carbon-nitrogen lyase catalysing the non-hydrolytic cleavage of the C-N bond between the ethlenediamine part of the molecule and one of the succinyl residues without any collectors being required. The reaction led to the formation of fumarate and AEAA [N-(2-aminoethyl) aspartic acid]. The further degradation of AEAA remains still to be

unraveled. To date, one can merely speculate that, catalysed by DH (dehydrogenase) or a MO (monooxygenase), the C-N bond between the succinyl residue and the ethylene diamine part of the molecule is split, or that an aspartyl residue is removed by the cleavage of a C-N bond within the ethylenediamine part of AEAA. (Ref. 5). [S,S]-ethylene diamine disuccinic acid and related [S,S] homologues comply with internationally accepted criteria for ready biodegradability of chemicals ''ostensibly because the metabolic products of the biodegradation are naturally occurring biochemicals such as succinic acid'' (Ref. 6).

8. *Endocrine disruption*. [S,S]-Ethylene diamine disuccinic acid does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. There is no evidence that [S,S]-ethylene diamine disuccinic acid had any effect on endocrine function in the developmental or reproduction studies.

C. Aggregate Exposure

1. *Dietary exposure*. As a minor formulation component, and given its rapid and complete mineralization, there is no reasonable expectation that [S,S]-ethylene diamine disuccinic acid will appear in the diet.

i. *Food*. As a minor formulation component, and given its rapid and complete mineralization, there is no reasonable expectation that [S,S]-ethylene diamine disuccinic acid will appear in the diet.

ii. *Drinking water*. As a minor formulation component, and given its rapid and complete mineralization, there is no reasonable expectation that [S,S]-ethylene diamine disuccinic acid will appear in water.

2. *Non-dietary exposure*. Non-dietary exposures to [S,S]-ethylene diamine disuccinic acid will be both occupational and residential. Occupational exposures include those to applicators and handlers of pesticides containing this substance. However, precautionary measures prescribed by the labels of pesticide products containing this substance will minimize these exposures. Also, [S,S]-ethylene diamine disuccinic acid is used in the U.S. in the metal treatment industry as a chelating agent. However, the precautionary measures prescribed by the product's material safety data sheet will minimize exposure to workers in this industry. [S,S]-Ethylene diamine disuccinic acid also is used in the U.S. in hair dye products as a chelating agent to stabilize the peroxide bleach portion. Exposure to [S,S]-ethylene diamine disuccinic acid in these residential products should be minimal because the products are used for limited periods and [S,S]-ethylene diamine disuccinic acid is used in minor amounts in the products.

D. Cumulative Effects

The potential for [S,S]-ethylene diamine disuccinic acid and other substances that have a common mechanism of toxicity has been considered. [S,S]-Ethylene diamine disuccinic acid is a naturally occurring substance produced by certain common bacteria, and it is rapidly and completely mineralized in the environment. There is no reliable information to indicate that toxic effects produced by [S,S]-ethylene diamine disuccinic acid would be cumulative with those of any other chemicals, including another pesticide. Therefore, the Associated Octel Corporation, Limited believes that it is appropriate to consider only the potential risks of [S,S]-ethylene diamine disuccinic acid in an aggregate risk assessment.

E. Safety Determination

1. *U.S. population*. As presented previously, the exposures of the U.S. general population to [S,S]-ethylene diamine disuccinic acid are low, few hazards are presented by [S,S]-ethylene diamine disuccinic acid, and the risks are minimal. Use of [S,S]-ethylene diamine disuccinic acid as a minor component of pesticide formulations applied to growing crops would not contribute significantly to the level of [S,S]-ethylene diamine disuccinic acid found naturally in the environment and to which man is exposed. Further, there is adequate information to show that any toxicological concern raised by the potential contribution of [S,S]-ethylene diamine disuccinic acid to growing crops is minimal. Occupational exposure to [S,S]-ethylene diamine disuccinic acid is expected to be well controlled and limited if worker-safety procedures are routinely practiced. Residential exposure also should be minimal, because of the low levels of [S,S]-ethylene diamine disuccinic acid contained in hair dyes and the infrequent, intermittent use of these products.

2. *Infants and children*. The complete toxicological data base, including the developmental toxicity studies, was considered in assessing the potential for additional sensitivity of infants and children to residues of [S,S]-ethylene diamine disuccinic acid. The developmental toxicity studies did indicate an increased sensitivity of rats to *in-utero* exposure to [S,S]-ethylene diamine disuccinic acid. However, this increased sensitivity appeared at very high dose levels which also caused maternal toxicity, and these levels are not expected to appear in or on growing crops, because [S,S]-ethylene diamine disuccinic acid is a minor component of pesticide formulations and it will rapidly and completely mineralize after application.

F. International Tolerances

There are no known international tolerances for residues of [S,S]-ethylene diamine disuccinic acid in food or animal feed.

G. References

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BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7861–9]

Carolina Steel Drum Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into an settlement for the partial reimbursement of past response costs with Custom Drum Services, Inc., McManus and Son Drum Company, and Tallent Drum Company, Inc. pursuant to section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Carolina Steel Drum Superfund Site (Site) located in Rock Hill, York County, South Carolina. EPA will consider public comments on the proposed settlement for February 18, 2005. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement in inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4, (WMD–SEIMB), 61 Forsyth Street, SW, Atlanta, Georgia 30303, (404) 562–8887, *Batchelor.Paula@epa.gov.*

Written comments may be submitted to Ms. Batchelor within 30 days of the date of this publication.

Dated: December 29, 2004.

De'Lyntoneus Moore,

Chief, Superfund Enforcement & Information Management Branch, Waste Management Division.

[FR Doc. 05–1029 Filed 1–18–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7862–4]

Public Water System Supervision Program Revision for the State of Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State of Utah has revised its Public Water System Supervision (PWSS) Primacy Program by adopting regulations corresponding to the following six federal rules which revised 40 CFR part 141, the National Primary Drinking Water Regulations (NPDWRs): Interim Enhanced Surface Water Treatment Rule (IESWTR), Lead and Copper Rule Minor Revisions (LCRMR), Disinfectants/Disinfection Byproducts Rule (DBPR), Public Notification Rule (PNR), Consumer Confidence Rule (CCR), and Radionuclides Rule. Having determined that the State's revisions meet all applicable requirements in the Safe Drinking Water Act (SDWA), 42 U.S.C. 300f *et seq.*, and EPA's implementing regulations at 40 CFR part 142, the EPA approves them, with the exception of the variance provisions. The State is not approved to grant variances under SDWA Section 1415(a)(1) (42 U.S.C. 300g(4)) and 40 CFR 142.10(d)(2) because the State has not adopted 40 CFR part 142, subpart G, which is a prerequisite. Utah's program revisions still meet minimum federal requirements because the authority to grant variances is optional for the State.

Today's approval action does not extend to public water systems in Indian country as that term is defined in 18 U.S.C. 1151. Please see **SUPPLEMENTARY INFORMATION**, Item B.

DATES: Any member of the public is invited to request a public hearing on this determination by February 18, 2005. Please see **SUPPLEMENTARY INFORMATION**, Item C, for information on requesting a hearing. If no hearing is requested or granted, then this action shall become effective February 18, 2005. If a public hearing is requested and granted, then this determination shall not become effective until such time following the hearing as the Regional Administrator (RA) issues an order affirming or rescinding this action.

ADDRESSES: Requests for a public hearing should be addressed to: Robert E. Roberts, Regional Administrator, c/o Marty Swickard (8P–W–MS), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA, Region 8, Municipal Systems Unit, 999 18th Street (4th Floor), Denver, CO 80202–2466; (2) Utah Department of Environment Quality (DEQ), Division of Drinking Water, 1950 West North Temple, Salt Lake City, UT 84114–4830.

FOR FURTHER INFORMATION CONTACT: Marty Swickard, Municipal Systems Unit, EPA, Region 8 (8P–W–MS), 999 18th Street, Suite 300, Denver, CO 80202–2466, 303–312–7021.

SUPPLEMENTARY INFORMATION: EPA approved Utah's application for assuming primary enforcement authority for the PWSS program, pursuant to section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–2, and 40 CFR part 142. DEQ administers Utah's PWSS program.

A. Why Are Revisions to State Programs Necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR Part 142 for maintaining primacy. They must adopt regulations that are at least as stringent as the NPDWRs at 40 CFR Part 141 (*see* 40 CFR 142.10(a)). Changes to state programs may be necessary as federal primacy requirements change, since states must adopt all new and revised NPDWRs in order to retain primacy (40 CFR 142.12(a)).

B. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Utah?

Utah is not authorized to carry out its PWSS program in Indian country. This includes lands within the exterior boundaries of the Skull Valley, Paiute, Navajo, Goshute, Ute Mountain, and Northwestern Shoshoni Indian Reservations; Indian country lands within the Uintah and Ouray Indian Reservation; and any other areas which are ''Indian country'' within the meaning of 18 U.S.C. 1151.

C. Requesting a Hearing

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the RA's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the RA in the **Federal Register** and in newspapers of general circulation in the State of Utah. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Utah. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. A final determination will be made upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the RA. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: January 10, 2005.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 05–1031 Filed 1–18–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, January 25, 2005, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, January 27, 2005, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2004–45: Senator Ken Salazar and Salazar for Senate, by Counsel, Marc E. Elias and Rebecca H. Gordon.

Notice of Proposed Rulemaking on Definition of Agent for BCRA Regulations on Coordinated and Independent Expenditures and Non-Federal Funds or Soft Money (11 CFR 109.3 and 300.2(b)).

Notice of Proposed Rulemaking on the *de Minimis* Exemption for Disbursement of Levin Funds by State, District, and Local Party Committees.

Final Rules on Contributions and Donations by Minors.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 05–1169 Filed 1–14–05; 2:52 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 1, 2005.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. William Tyler Johnson, Jr., Sweetwater, Texas, to acquire additional voting shares of Mesa Financial Corporation, Sweetwater, Texas, and thereby indirectly acquire voting shares of Texas National Bank, Sweetwater, Texas.

Board of Governors of the Federal Reserve System, January 12, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–1014 Filed 1–18–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 11, 2005.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Glacier Bancorp, Inc., Kalispell, Montana; to acquire 100 percent of the voting shares of Citizens Bank Holding Company, Pocatello, Idaho, and thereby indirectly acquire Citizens Community Bank, Pocatello, Idaho.

Board of Governors of the Federal Reserve System, January 12, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–1012 Filed 1–18–05; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Record of Decision

The General Services Administration (GSA) has published a Final Supplement to the 1992 Environmental Impact Statement (EIS) for the Del Rio Border Station Expansion, Del Rio, Texas. The Supplement to the 1992 Final EIS is entitled:

Supplement to the 1992 Del Rio Border Station Expansion Environmental Impact Statement—Increased Security Measures Associated With Phase III Expansion at the Del Rio Port of Entry; Del Rio, Val Verde County, TX

Decision

The GSA has decided to increase security at and around the Del Rio Port of Entry (POE) in accordance with measures outlined for heightened security along the nation's borders after the events of September 11, 2001. The

increased security measures would be implemented in conjunction with the Phase III expansion activities described in the 1992 Final EIS.

Purpose and Need

The purpose and need for the proposed action (as described in the 2004 Supplement to the 1992 EIS, pages 1–1–1–3, available at *http://public.geo-marine.com/*) are to better secure the border at the Del Rio POE complex while ensuring efficient flow of lawful traffic and commerce.

Issues

The 2004 Supplement to the 1992 EIS analyzed the potential impacts of implementing increased security measures at and around the Del Rio POE complex. Issues associated with the proposed increased security measures (identified through scoping) include land use, transportation, air quality, noise, socioeconomic (including environmental justice), and cultural resources. Issues eliminated from detailed analysis (due to relevancy to the proposed action or prior environmental review in the 1992 EIS) include soils, hydrology, vegetation and wildlife (including protected species), and public services and utilities.

Alternatives Considered

The following alternatives were analyzed to determine which best satisfied the purpose and need for the increased security measures.

Alternative 1—No Action Alternative

Under this alternative, no new security measures would be implemented to increase security at and around the Del Rio POE complex. This alternative would be considered environmentally preferable and would result in no land use, transportation, air quality, noise, socioeconomic (including environmental justice), or cultural resources impacts. However, implementing this alternative would not allow the GSA to increase security in accordance with measures outlined for heightened security along the nation's borders. The requirements for increased security were the primary consideration in not choosing this alternative.

Alternative 2—Preferred Alternative

Under this alternative, security would be increased at and around the Del Rio POE complex, resulting in the elimination of all pedestrian and vehicular traffic/access east along Rio Grande Road. This would be accomplished by permanently closing a portion of Rio Grande Road (approximately 550 feet of road east of State Spur 239) (page 2–5 of the Supplement). As part of implementing this alternative, the 550-foot stretch of road would be immediately closed (through the placement of ''jersey barriers'') to quickly realize increased security and to facilitate construction associated with Phase III expansion activities. Additionally, a new Commercial Exit Control Facility and exit road would be constructed. After construction, a portion of the exit road and corresponding land would be donated to the City of Del Rio as a public right-of-way (figure available at *http://public.geo-marine.com/*). The entire length of exit road could then be used by the City of Del Rio and the Government for the construction of a bypass road replacing Rio Grande Road. As part of implementing this alternative the GSA would also make available approximately one acre in the northwest corner of the government property for an easement granted to the Faith Mission (figure available at *http://public.geo-marine.com/*). This easement would be out-parceled by security fencing and would allow the Faith Mission to construct service facilities at some time in the future.

This alternative would be considered environmentally preferable and would result in no land use, transportation, air quality, noise, or cultural resources impacts. However, eliminating pedestrian access to Rio Grande Road east would result in increased travel time for a small population of low-income and/or minority visitors of the Faith Mission. Access to the Faith Mission would still be possible through alternate traffic routing; however, this would increase the travel time of approximately 42 individuals per service day that walked. Additionally, if the Faith Mission elects to locate some service facilities on the approximately one acre easement, then those services would be directly accessible by pedestrians immediately after processing through the POE. Implementing this alternative would allow the GSA to increase security in accordance with measures outlined for heightened security along the nation's borders. Although implementation of this alternative would increase the travel time to the Faith Mission, the requirements for increased security were the primary consideration in choosing this alternative. In choosing this alternative to implement, the GSA has adopted all practicable means to avoid or minimize environmental harm (pages 2–4–2–7).

Alternative 3

Similar to the previous alternative (Alternative 2), under this alternative, security would be increased at and around the Del Rio POE complex, resulting in the elimination of all pedestrian and vehicular traffic/access east along Rio Grande Road. However, pedestrian traffic would be facilitated east through the construction of an elevated walkway. This alternative was not carried forward for detailed analysis because of security concerns and the significant costs associated with constructing and maintaining an elevated walkway. These were the primary considerations in not choosing this alternative.

Alternative 4

Similar to the previous alternatives (Alternative 2 and 3), under this alternative, security would be increased at and around the Del Rio POE complex, resulting in the elimination of all pedestrian and vehicular traffic/access east along Rio Grande Road. However, pedestrian traffic would be facilitated east through the construction of a pedestrian tunnel. This alternative was not carried forward for detailed analysis because of security concerns and the significant costs associated with constructing and maintaining a pedestrian tunnel. These were the primary considerations in not choosing this alternative.

Questions and Comments

During the comment period for the Draft Supplement, the GSA received two comments; both stated no objection to the proposed project. The GSA believes there are no outstanding environmental issues to be resolved with implementing increased security measures at and around the Del Rio POE facility.

Questions regarding the Supplement to the 1992 EIS may be directed to Lisa Schaub, Region 7 Environmental and Safety Group, GSA 819 Taylor Street 7PWM, Fort Worth, Texas 76102, (817) 978–4233.

Dated: January 10, 2005.

Scott Armey,

Regional Administrator, GSA, Region 7, Fort Worth, Texas.

[FR Doc. 05–999 Filed 1–18–05; 8:45 am]

BILLING CODE 6820–27–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2230–NC]

State Children's Health Insurance Program (SCHIP); Redistribution of Unexpended SCHIP Funds From the Appropriation for Fiscal Year 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period describes the procedure for redistribution of States' unexpended Federal fiscal year (FY) 2002 SCHIP allotments remaining at the end of FY 2004 to those States that fully expended such allotments. These redistributed allotments will be available through the end of FY 2005 (September 30, 2005).

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on February 18, 2005.

Effective Date: January 19, 2005.

ADDRESSES: In commenting, please refer to file code CMS–2230–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments to *http://www.cms.hhs.gov/regulations/ecomments* (attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word).

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2230–NC, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this notice with comment period to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–2230–NC and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. CMS posts all electronic comments received before the close of the comment period on its public Web site as soon as possible after they have been received. Hard copy comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

This **Federal Register** document is available from the **Federal Register** online database through *GPO Access,* a service of the U.S. Government Printing Office. The Web site address is: *http://www.gpoaccess.gov/fr/index.html.*

I. Background

[If you choose to comment on issues in this section, please include the caption ''Background'' at the beginning of your comments.]

A. Extension of Availability and Redistribution of SCHIP Fiscal Year 1998 Through 2001 Allotments

Title XXI of the Social Security Act (the Act) sets forth the State Children's Health Insurance Program (SCHIP) to enable States, the District of Columbia, and specified Commonwealths and Territories to initiate and expand health insurance coverage to uninsured, low-income children. In this notice, unless otherwise indicated, the terms ''State'' and ''States'' refer to any or all of the 50 States, the District of Columbia, and the Commonwealths and Territories. States may implement SCHIP through a separate child health program under title XXI of the Act, an expanded program under title XIX of the Act, or a combination of both.

Under section 2104(e) of the Act, the SCHIP allotments for a Federal fiscal year are available to match expenditures under an approved State child health plan for an initial 3-fiscal year ''period of availability,'' including the fiscal year for which the allotment was provided. After the initial period of availability, the amount of unspent allotments are reallotted and continue to be available during a subsequent period of availability, specified in SCHIP statute. With the exception described below for the allotments made in FYs 1998 through 2001, allotments that are unexpended at the end of the initial 3-year period of availability would be redistributed from the States that did not fully spend such allotments to States that fully spent their allotments for that fiscal year.

The Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), enacted as part of Pub. L. 106–554 on December 21, 2000, amended title XXI of the Act in part by establishing requirements for a subsequent extended period of availability with respect to the amounts of States' FY 1998 and FY 1999 allotments that were unspent during the initial 3-year period of availability. Under the BIPA amendments, the subsequent period of availability (after the initial 3-year period of availability) for States' unspent FY 1998 and 1999 allotments was extended to the end of FY 2002.

Section 1 of the Extension of Availability of SCHIP Allotments Act, Pub. L. 108–74, enacted on August 15, 2003, amended title XXI of the Act to establish further requirements for the subsequent period of availability associated with the unexpended amounts of States' FYs 1998, 1999, 2000, and 2001 allotments during the initial 3-year period of availability, or

subsequent period of availability, relating to those fiscal years. Specifically, Pub. L. 108–74 amended section 2104(g) of the Act to extend the subsequent period of availability associated with the allotments and redistribution of allotments for FYs 1998 through 2000 through the end of fiscal year 2004. Pub. L. 108–74 also extended the subsequent period of availability for the redistributed and extended FY 2001 allotments through the end of fiscal year 2005.

As amended by Pub. L. 108–74, section 2104(g) of the Act prescribes a methodology and process that includes the retention of certain amounts of unspent FY 2000 and FY 2001 allotments that would remain available to the States that did not fully expend their FY 2000 or FY 2001 allotments (retained allotments), and the redistribution of unspent FY 2000 or FY 2001 allotments that would not be retained but which would be redistributed to those other States that fully spent their FY 2000 or FY 2001 allotments (redistributed allotments).

B. Availability and Redistribution of SCHIP Fiscal Year 2002 Allotments

As discussed previously, section 2104(e) of the Act states that amounts allotted to a State shall remain available for expenditures by the State through the end of the second succeeding fiscal year, except that amounts reallotted to a State are available for expenditure by the State through the end of the fiscal year in which they are reallotted. Section 2104(f) of the Act requires the Secretary to ''determine an appropriate procedure for redistribution of allotments'' from States that have not expended the allotment for the fiscal year to States that have fully expended their allotments. As discussed previously, section 2104(g) of the Act, as added by BIPA and amended by Pub. L. 108–74, sets forth the process for reallotting unexpended amounts of SCHIP allotments for FY 1998 through FY 2001 (as well as for the extension of the period of time to expend allotments). Section 2104(g) of the Act did not address the treatment of States' unexpended SCHIP allotments for FY 2002 and the following fiscal years. Under sections 2104(e) and (f) of the Act, we are required to establish a procedure that provides for the treatment of States' unused SCHIP allotments for FY 2002 and following fiscal years. In particular, applying section 2104(f) of the Act, following the initial 3-year period of availability referenced in section 2104(e) of the Act, the Secretary must determine an ''appropriate procedure for redistribution'' of the amounts of States' FY 2002 SCHIP allotments *from* States that did not expend such allotments during the 3-year period of availability for such fiscal year (that is, FY 2002 through FY 2004) *to* States that fully expended their FY 2002 allotments during such 3-year period of availability.

C. Expenditures, Authority for Qualifying States To Use Available SCHIP Allotments for Medicaid Expenditures, and Ordering of Elections

Under section 2105(a)(1)(A) through (D) and (a)(2) of the Act and before enactment of Pub. L. 108–74, only Federal payments for the following Medicaid and SCHIP expenditures were applied against States' available SCHIP allotments in the following order: (1) Medical assistance provided under title XIX (Medicaid) at the SCHIP enhanced Federal medical assistance percentage (FMAP) matching rate with respect to the States' Medicaid SCHIP expansion population; (2) medical assistance provided on behalf of a child during presumptive eligibility under section 1920A of the Act (these funds are matched at the regular Medicaid FMAP rate); (3) child health assistance to targeted low income children that meets minimum benefit requirements under SCHIP; and (4) certain expenditures in the SCHIP that are subject to the 10-Percent Limit on non-primary expenditures (including other child health assistance for targeted low-income children, health services initiatives, outreach, and administrative costs).

However, section 1(b) of Pub. L. 108–74, as amended by Pub. L. 108–127, added new section 2105(g) to the Act under which certain ''Qualifying States'' that met prescribed criteria may elect to use up to 20 percent of any of the States' available SCHIP allotments for FY 1998, 1999, 2000, or 2001 as additional Federal financial participation for expenditures under their Medicaid program, instead of expenditures under the State's SCHIP. As described in the **Federal Register** published on July 23, 2004 (69 FR 44013), if a Qualified State submits both 20 percent allowance expenditures and other ''regular'' SCHIP expenditures at the same time in a quarter, the 20 percent allowance expenditures will be applied first against the available fiscal year reallotments. However, the 20 percent allowance expenditures may be applied only against the specified available fiscal year allotment funds upon which the 20 percent allowances were based.

II. Provisions of This Notice

[If you choose to comment on issues in this section, please include the caption ''Provisions of This Notice'' at the beginning of your comments.]

The purpose of this notice with comment period is to set forth our procedure for redistributing FY 2002 unexpended allotments. This notice applies solely to the redistribution of FY 2002 unexpended allotments. We anticipate publishing regular notices on redistribution procedures for FY 2003 and subsequent years, unless Congress otherwise amends the Act to set forth procedures for redistributing unexpended allotments.

A. Status of Extended Availability and Redistribution of SCHIP Fiscal Year 1998 Through 2001 Allotments and Qualifying State Provisions

The implementation by CMS of the provisions of Pub. L. 108–74, including the provisions for extension of unexpended FY 1998 and FY 1999 redistributed and/or retained allotments, the methodologies for retention and/or redistribution of SCHIP allotments for FY 2000 and FY 2001, and the qualifying States provisions, was described in the **Federal Register** published on July 23, 2004 (69 FR 44013). The SCHIP statute has not been amended to address further availability of the SCHIP allotments for FY 1998 through FY 2000. Therefore, the unexpended amounts of such allotments became unavailable to States following the end of FY 2004. Neither has the SCHIP statute been amended with respect to the extended availability and redistribution of the FY 2001 allotments. Under the existing SCHIP statute, the FY 2001 reallotments are available to States only until the end of FY 2005. Finally, the SCHIP statute has not been amended with respect to the Qualifying State provisions under section 2105(g) of the Act. The FY 1998 through 2000 allotment funds became unavailable to States at the end of FY 2004. Since the 20 percent allowances related to those years are contingent on the actual availability of the allotments for those years, the FY 1998 through FY 2000 20 percent allowances are not available to the Qualified States, effective with FY 2005. Therefore, only the amounts of the 20 percent allowances related to the FY 2001 allotment funds, which are available in FY 2005, will remain available through the end of FY 2005.

B. Redistribution of the FY 2002 SCHIP Allotments

1. Current Law

Under section 2104(e) of the Act, the amount of a State's allotment for a fiscal year is available to the State for matching allowable State expenditures for an initial 3-year period of availability: the fiscal year for which the funds are allotted, and the two following fiscal years. For the FY 2002 SCHIP allotments, the initial 3-year period of availability is FY 2002 through FY 2004 (October 1, 2002 through September 30, 2004). With respect to the FY 2002 SCHIP allotments, the initial 3-year period of availability (FY 2002 through FY 2004) ended with the end of FY 2004 on September 30, 2004; at that time, the unexpended FY 2002 allotments became unavailable to those States that did not fully expend such allotments. That is, for such States there is no provision under the current SCHIP statute for the *retention* of any portion of the unexpended amounts of the SCHIP FY 2002 allotments (or the allotments for the following fiscal years).

Under section 2104(f) of the Act, the Secretary must determine an appropriate procedure to redistribute the entire amount of States' unexpended SCHIP allotments following the end of the related initial 3-year period of availability *only* to those States that fully expended such allotments by the end of the initial 3-year period of availability (referred to in this notice as the redistribution States). In determining the appropriate procedure for reallocating the unused FY 2002 allotments, our primary consideration was to address, to the greatest extent possible, any projected State shortfalls for each of the redistribution States that would occur in FY 2005, the fiscal year in which the FY 2002 redistribution would occur. We determined the shortfalls by considering for each redistribution State: (1) The projected SCHIP-related expenditures in FY 2005, as reflected in the State's November 15, 2004 quarterly budget submission (Forms CMS–37 and/or CMS–21B), and (2) the total SCHIP allotments available in FY 2005 for the State, exclusive of any FY 2002 redistribution. For a redistribution State whose FY 2005 projected SCHIP-related expenditures are greater than its total SCHIP allotments available in FY 2005, the difference between the amounts under (1) and (2) for a State represents that State's ''shortfall,'' for FY 2005.

In the FY 2002 redistribution described in this notice, only after accounting for the shortfall amounts of the redistribution States will we further redistribute any remaining unexpended FY 2002 allotments to the redistribution States. For purposes of consistency with previous fiscal year redistribution methodologies, we based the redistribution of the remaining unexpended FY 2002 allotments (after accounting for the total shortfalls for each redistribution State) on the same redistribution methodology as set forth in the BIPA legislation regarding section 2104(g)(1) of the Act. Specifically, we allocated the remaining amounts of the unexpended FY 2002 allotments based on the difference between each of the redistribution States' total SCHIP-related expenditures for the 3-year period of availability related to FY 2002 (that is, FY 2002 through FY 2004) and the State's FY 2002 allotment. The allocation basis is the percentage determined by dividing this difference for each redistribution State (including those redistribution States with a shortfall) by the total of such differences for all redistribution States.

2. Ordering of Expenditures

In applying State's expenditures against their available SCHIP allotments, we follow the order of expenditures as provided under section 2105(a)(1)(A) through (D) and (a)(2) of the Act as follows:

(1) Title XIX SCHIP-related expenditures for which payment is made at the enhanced Federal medical assistance percentage (FMAP) (section 2105(a)(1)(A) of the Act);

(2) Title XIX expenditures for medical assistance provided during a presumptive eligibility period under section 1920A of the Act (section 2105(a)(1)(B) of the Act);

(3) Child health assistance for targeted low-income children in the form of providing health benefits coverage that meets the requirements of section 2103 (section 2105(a)(1)(C) of the Act);

(4) Expenditures listed in section 2105(a)(1)(D)(i) through (iv) of the Act, respectively: Other child health assistance for targeted low-income children; health services initiatives under the plan for improving the health of children (including targeted low-income children and other low-income children); expenditures for outreach activities; and administration expenditures.

As discussed previously, Pub. L. 108–74, as amended by Pub. L. 108–127, also added new section 2105(g) to the Act, under which a ''Qualifying State'' meeting specified criteria could, at its option, elect to use up to 20 percent of any of the State's available SCHIP allotments for FY 1998, 1999, 2000, or 2001 for payments under the State's Medicaid program, instead of expenditures under the State's SCHIP. As described in the **Federal Register** published on July 23, 2004 (69 FR 44013), if a Qualified State submits both 20 percent allowance expenditures and other ''regular'' SCHIP expenditures at the same time in a quarter (based on the allotment priority order they both must apply against any available fiscal year allotments), the 20 percent allowance expenditures will be applied first against any remaining 20 percent allowance allotments amounts.

In general, in accordance with the ordering of allotments and expenditures provisions, the expenditures of States eligible for the FY 2002 redistribution will be applied against the FY 2002 redistribution amounts.

3. Ordering Election for FY 2002 Redistributed Amounts

We believe that the States eligible for the FY 2002 redistribution should be afforded the flexibility to decide whether the FY 2002 redistributed funds would be used before or after other available allotment funds to allow them to optimize the use of such funds. Therefore, we offered States that will receive FY 2002 redistributed amounts the option of choosing the order of when the funds would be expended during FY 2005 among the other available allotments during FY 2005. In the previous redistributions for the unexpended FY 1998, FY 1999, and FY 2000 allotments, the redistribution States had the same ordering of allotment choice for the redistributed allotment.

An FY 2002 redistribution State (a State that has fully expended its FY 2002 allotment) may have a maximum of five possible choices for the order of the application of FY 2002 redistribution funds in FY 2005, depending on what other fiscal year allotments are available to the State in FY 2005: (1) before FY 2001 retained allotments; (2) after FY 2001 retained allotments and before FY 2003 allotments; (3) after FY 2003 and before FY 2004 allotments; (4) after FY 2004 allotments and before FY 2005 allotments; and (5) after FY 2005 allotments.

Note, with respect to the unexpended FY 2001 allotments at the end of FY 2003, the FY 2001 ''redistribution States'' also had the option of selecting the ordering of the FY 2001 redistributed allotments which were provided to such States in FY 2004. Now, with respect to the FY 2002 redistributed allotments, the FY 2002 redistribution States that also had FY

2001 redistributed amounts have the option of ordering the FY 2002 redistributed allotments in reference to their FY 2001 redistributed allotments ordering selections.

As specified in section 2104(e) of the Act, the FY 2002 redistributed amounts for a fiscal year will be available for allowable SCHIP expenditures reported by the redistribution States through the end of the fiscal year in which such amounts are redistributed. Therefore, for FY 2002, the redistributed amounts will be available through September 30, 2005 (the end of FY 2005).

As part of the redistribution process, prior to making FY 2002 redistribution funds actually available, we contact all of the States eligible for the FY 2002 redistribution in order to explain the provisions of this notice and to obtain their ordering elections for the FY 2002 redistributed amounts. In this regard, all of the redistribution States must provide their decision to us regarding their elections for the ordering of the FY 2002 redistributed allotments. This is the same process we have used in prior years for obtaining prior fiscal year redistribution States' ordering elections. Consistent with the past fiscal year redistribution processes, under the FY 2002 redistribution methodology, once a State chooses the order of the FY 2002 redistribution amounts, it cannot change that order at a later date. We then include the States' FY 2002 redistributed amounts and their ordering elections on Form CMS–21C (Allocation of Title XIX and Title XXI Expenditures to the SCHIP Fiscal Year Allotment). Form CMS–21C is used for tracking States' expenditures against their available SCHIP allotments. The FY 2002 redistributed allotment amounts will be automatically entered on this form, and the Medicaid and SCHIP expenditure system will automatically apply expenditures reported on the quarterly expenditure reports for the period of October 1, 2004 through September 30, 2005 against the FY 2002 redistributed amounts available through September 30, 2005 and the other SCHIP allotments available in FY 2005.

4. Determination of FY 2002 Redistribution Amounts

In Table 2 of this notice, we set forth the amount of States' unexpended FY 2002 allotments as reflected by the States' expenditure submissions through November 30, 2004. These amounts are used in determining the States' FY 2002 redistribution amounts. We established the amount of States' unexpended FY 2002 allotments at the end of the initial 3-year period of availability based on the SCHIP-related expenditures, as reported and certified by States to us on the quarterly expenditure reports (Form CMS–64 and/or Form CMS–21) by November 30, 2004. These expenditures are applied and tracked against the States' FY 2002 allotments (as published in the **Federal Register** on October 26, 2001 (66 FR 54246), and on November 13, 2001 (correction notice (66 FR 56902)), and other available allotments, on Form CMS–21C, Allocation of the Title XIX and Title XXI Expenditures to SCHIP Fiscal Year Allotment.

By November 30, 2004, all States reported and certified their FY 2004 fourth quarter expenditures (representing the last quarter of the 3-year period of availability for FY 2002). Expenditures reflected in Table 2 below were taken from our Medicaid Budget and Expenditure System/State Children's Health Program Budget and Expenditure System (MBES/CBES) ''masterfile'', which represents the State's official certified SCHIP and Medicaid expenditure reporting system records related to FY 2002 allotments. Based on States' expenditure reports submitted and certified through November 30, 2004, the total amounts of States' FY 2002 SCHIP allotments that were unexpended at the end of the 3-year period ending September 30, 2004, is $642,617,724.

5. Application of the Maintenance of Effort Provision

The unexpended FY 2002 allotments reflect the application of the ''maintenance of effort'' (MOE) provisions specified in the SCHIP statute at section 2105(d)(2) of the Act. Under section 2105(d)(2) of the Act, the amount of certain States' allotments in a fiscal year, beginning with fiscal year 1999, is reduced if the State does not meet specified spending levels on children's health insurance. There were no MOE reductions necessary with respect to the FY 2002 allotments.

6. Redistribution for the Commonwealths and Territories for FY 2002 Allocations

Section 2104(g)(1)(A)(ii) of the Act specifies the methodology for determining the *FY 1998 through FY 2001* redistributed allotments for the Commonwealths and Territories that fully expended their SCHIP allotments related to those fiscal years. We applied the same methodology for purposes of determining an appropriate procedure under section 2104(f) of the Act, to redistribute the unexpended *FY 2002* allotments remaining at the end of FY 2004. Under this procedure, the total FY 2002 allotment amount available for redistribution to the Commonwealths and Territories is determined by multiplying the total amount of the unexpended FY 2002 allotments available for redistribution nationally by 1.05 percent. For the FY 2002 redistribution calculation, this amount is $6,747,486 (1.05 percent of $642,617,724). Only those Commonwealths and Territories that have fully expended their FY 2002 allotments will receive an allocation of this amount, equal to a specified percentage of the 1.05 percent amount; with respect to the FY 2002 allotments, all 5 Commonwealths and Territories fully expended such allotments by the end of FY 2004. This specified percentage is the amount determined by dividing the respective SCHIP FY 2002 allotment for each Commonwealth or Territory (that has fully expended its FY 2002 allotment) by the total of all the FY 2002 allotments for those Commonwealths and Territories that fully expended their FY 2002 allotments.

7. Redistribution for the States and the District of Columbia for FY 2002 Allocations

Section 2104(f) of the Act requires the Secretary to determine an appropriate procedure for calculating the redistribution amounts for each of those States and the District of Columbia that have fully expended their allotments. This notice sets forth the procedure for the FY 2002 redistribution. The attached tables and table descriptions provide detailed information on how the reallotment amounts are calculated. Generally, the FY 2002 redistribution amounts for the 50 States and the District of Columbia were determined as follows:

First, the total amount available for redistribution nationally was established by determining the total amount of unexpended FY 2002 allotments remaining at the end of FY 2004, as reported by the States through November 30, 2004.

Second, the total amount available for redistribution to the States and the District of Columbia (not including the Commonwealths and Territories) was determined by subtracting the total of the FY 2002 redistribution amounts for the Commonwealths and Territories from the total available nationally for redistribution.

Third, the allocation of this total amount available for redistribution to the States and District of Columbia is determined by determining the ''shortfall'' amounts (if any) for these redistribution States that would occur in FY 2005, the fiscal year in which the

unexpended FY 2002 allotments are actually redistributed. The FY 2005 shortfall amount, described previously, was determined as the excess (if any) of the FY 2002 redistribution States' projected FY 2005 expenditures (taken from the States' November 2004 budget quarterly budget report submissions) over such States' total SCHIP allotments available in FY 2005 (not including any potential FY 2002 redistribution amounts). In this regard, the total available allotments in FY 2005 include the following: any remaining FY 2001 reallotments carried over from FY 2004, any remaining 2003 allotments carried over from FY 2004, any remaining 2004 allotments carried over from FY 2004, and the FY 2005 allotments (available beginning with FY 2005).

Fourth, the amount of any unexpended FY 2002 allotments remaining after determining and accounting for the shortfall amounts was multiplied by a percentage specific to each FY 2002 redistribution State. This percentage is determined for each FY 2002 redistribution State by dividing the difference between such State's total reported applicable expenditures for the FY 2002 3-year period of availability and the State's FY 2002 allotment related to that period of availability, by the total of these differences for all redistribution States.

8. Tables for Calculating the SCHIP FY 2002 Redistributed Allotments

Following, is a description of Table 1 and Table 2, which presents the calculation of each redistribution State's FY 2002 SCHIP redistribution amount.

A total of $3,115,200,000 was allotted nationally for FY 2002, representing $3,082,125,000 in allotments to the 50 States and the District of Columbia, and $33,075,000 in allotments to the Commonwealths and Territories. Based on the quarterly expenditure reports, submitted and certified by November 30, 2003, 28 States fully expended their FY 2002 allotments, 23 States and the District of Columbia did not fully expend their FY 2002 allotments, and all 5 of the Commonwealths and Territories fully expended their FY 2002 allotments. For the States and the District of Columbia that did not fully expend their FY 2002 allotments, their total FY 2002 allotments were $1,413,648,379 and the total expenditures applied against their FY 2002 allotments were $771,030,655. Therefore, the total amount of unexpended FY 2002 allotments at the end of FY 2004 equaled $642,617,724 ($1,413,648,379 minus $771,030,655). In addition, as discussed above, no MOE reductions were necessary with respect to the FY 2002 allotments. Therefore, the total amount of the FY 2002 allotments unexpended at the end of FY 2004 equaled $642,617,724 ($642,617,724 plus $0 related to the MOE provision).

In accordance with the redistribution calculation for FY 2002 described above, $6,747,486 is redistributed to the five Commonwealths and Territories, and $635,870,238 redistributed to the 28 redistribution States. The total $642,617,724 in FY 2002 redistributed allotment amounts will remain available to these States through the end of FY 2005.

Key to Table 1—FY 2005 Shortfall Calculation

Table 1 Presents the FY 2005 shortfall calculation for the 50 States and the District of Columbia.

Column/Description

Column A = *State.* Name of State, District of Columbia, the Commonwealth or Territory. This is the only column in Table 1 that includes Commonwealths and Territories; the shortfall calculation in Table 1 is not applicable to the jurisdictions.

Column B = *FY 2001 Retained/ Redistributed Allotments Carried Over From FY 2004.* This column contains the amounts of States' FY 2001 redistributed or retained allotments carried over from FY 2004 and available in FY 2005.

Column C = *FY 2003 Allotments Carried Over From FY 2004.* This column contains the amounts of States' FY 2003 allotments carried over from FY 2004 and available in FY 2005.

Column D = *FY 2004 Allotments Carried Over From FY 2004.* This column contains the amounts of States' FY 2004 allotments carried over from FY 2004 and available in FY 2005.

Column E = *FY 2005 Allotments Initially Available Beginning FY 2005.* This column contains the FY 2005 SCHIP allotments, which are initially available in FY 2005, and were published in the **Federal Register** on August 27, 2004 (69 FR 52700).

Column F = *Total Available Allotments In FY 2005 Not Including FY 2002 Redistribution.* This column contains the States' total allotment amounts (not including any FY 2002 redistribution amounts) available in FY 2005. This amount is the sum of Columns B through E.

Column G = Projected Expenditures FY 2005. This column contains the amounts of States' projected FY 2005 SCHIP and SCHIP-related expenditures as contained in the States' November 15, 2004 quarterly budget submission.

Column H = *Projected FY 2005 Shortfall Not Including FY 2002 Redistribution.* This column contains the States' projected FY 2005 shortfall amounts, calculated as Column G minus Column F.

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TABLE 1 - FY 2005 SHORTFALL CALCULATION

State	FY 2001 Retained/ Redistributed Allotments Carried Over From FY 2004	FY 2003 Allotments Carried Over From FY 2004	FY 2004 Allotments Carried Over From FY 2004	FY 2005 Allotments Initially Available Beginning FY 2005	Total Available Allotments in FY 2005 Not Including FY 2002 Redistribution Col B + C + D + E	Projected Expenditures FY 2005 From Nov. 04 Estimates	Projected FY 2005 Shortfall Not Including FY 2002 Redistribution Col G - F
A	B	C	D	E	F	G	H
Alabama	$0	$38,780,591	$54,679,333	$68,041,101	$161,501,025	$71,688,000	NO Shortfall
Alaska	$13,106,151	$7,430,455	$7,156,891	$9,020,449	$36,713,946	$18,020,000	NO Shortfall
Arizona	$0	$0	$20,451,690	$106,473,496	$126,925,186	$174,286,000	$47,360,814
Arkansas	$26,978,616	$34,154,500	$35,073,372	$48,661,587	$144,868,075	$29,414,000	NO Shortfall
California	$0	$548,807,933	$533,990,797	$667,443,669	$1,750,242,399	$793,733,000	NO Shortfall
Colorado	$0	$37,914,522	$44,865,429	$57,951,287	$140,731,238	$44,707,000	NO Shortfall
Connecticut	$2,534,685	$24,361,434	$27,975,129	$36,560,595	$91,431,843	$19,872,000	NO Shortfall
Delaware	$2,073,663	$8,686,068	$7,817,461	$9,045,920	$27,623,112	$5,663,000	NO Shortfall
District of Columbia	$0	$7,201,920	$7,198,952	$9,635,097	$24,035,969	$7,694,000	NO Shortfall
Florida	$132,618,160	$35,421,360	$193,614,837	$249,246,758	$610,901,115	$391,991,000	NO Shortfall
Georgia	$24,823,484	$0	$103,892,954	$130,915,014	$259,631,452	$191,945,000	NO Shortfall
Hawaii	$0	$9,647,963	$9,647,963	$12,404,524	$31,700,450	$10,927,000	NO Shortfall
Idaho	$0	$16,795,479	$16,958,002	$20,747,545	$54,501,026	$17,429,000	NO Shortfall
Illinois	$0	$59,196,232	$120,969,643	$164,935,925	$345,101,800	$238,955,000	NO Shortfall
Indiana	$14,570,905	$53,709,869	$54,026,680	$73,421,543	$195,728,997	$73,308,000	NO Shortfall
Iowa	$0	$8,644,989	$19,703,423	$28,266,206	$56,614,618	$45,666,000	NO Shortfall
Kansas	$14,982,065	$20,083,084	$23,541,920	$28,479,189	$87,086,258	$42,797,000	NO Shortfall
Kentucky	$33,743,149	$37,984,461	$39,286,749	$54,060,786	$165,075,145	$78,498,000	NO Shortfall
Louisiana	$0	$44,240,933	$64,523,178	$77,477,697	$186,241,808	$113,156,000	NO Shortfall
Maine	$8,706,125	$9,688,881	$9,474,540	$12,462,201	$40,331,747	$23,091,000	NO Shortfall
Maryland	$65,648,887	$33,648,564	$36,121,348	$48,348,957	$183,767,756	$117,677,000	NO Shortfall
Massachusetts	$27,707,902	$46,201,047	$46,201,047	$59,401,346	$179,511,342	$89,475,000	NO Shortfall
Michigan	$0	$86,568,091	$89,138,280	$111,345,557	$287,051,928	$169,252,000	NO Shortfall
Minnesota	$0	$0	$25,164,277	$38,614,589	$63,778,866	$81,446,000	$17,667,134
Mississippi	$13,604,712	$0	$36,897,326	$48,165,511	$98,667,549	$120,915,000	$22,247,451
Missouri	$0	$20,239,122	$41,923,481	$53,958,180	$116,120,783	$93,386,000	NO Shortfall
Montana	$0	$10,005,270	$10,193,881	$12,284,292	$32,483,443	$16,148,000	NO Shortfall
Nebraska	$0	$0	$12,482,163	$17,096,147	$29,578,310	$28,354,000	NO Shortfall
Nevada	$0	$30,436,463	$31,163,957	$40,387,249	$101,987,669	$27,629,000	NO Shortfall
New Hampshire	$3,143,900	$8,903,739	$8,013,366	$9,272,609	$29,333,614	$7,645,000	NO Shortfall
New Jersey	$0	$0	$25,767,757	$84,735,099	$110,502,856	$242,284,000	$131,781,144
New Mexico	$25,383,498	$32,788,606	$32,788,606	$42,156,779	$133,117,489	$75,701,000	NO Shortfall
New York	$164,030,940	$227,517,050	$216,455,790	$270,142,080	$878,145,860	$511,888,000	NO Shortfall
North Carolina	$40,464,013	$67,513,855	$85,753,907	$110,255,024	$303,986,799	$201,153,000	NO Shortfall
North Dakota	$0	$5,436,695	$5,436,695	$6,384,719	$17,258,109	$8,555,000	NO Shortfall
Ohio	$0	$60,480,850	$103,803,316	$125,842,184	$290,126,350	$171,774,000	NO Shortfall
Oklahoma	$0	$44,621,756	$44,621,756	$57,370,830	$146,614,342	$46,985,000	NO Shortfall
Oregon	$1,399,872	$40,708,703	$38,056,795	$47,255,380	$127,420,750	$20,621,000	NO Shortfall
Pennsylvania*	$0	$92,759,160	$98,747,809	$130,963,777	$322,470,746	$144,137,000	NO Shortfall
Rhode Island	$223,963	$0	$0	$9,354,646	$9,578,609	$27,509,000	$17,930,391
South Carolina	$0	$43,402,180	$43,355,057	$54,306,115	$141,063,352	$64,520,000	NO Shortfall
South Dakota	$0	$4,405,884	$5,790,144	$7,886,854	$18,082,882	$14,826,000	NO Shortfall
Tennessee	$43,148,411	$58,354,512	$57,957,983	$78,904,574	$238,365,480	$17,259,000	NO Shortfall
Texas	$0	$311,503,988	$330,851,514	$449,972,119	$1,092,327,621	$316,101,000	NO Shortfall
Utah	$0	$24,693,700	$24,091,106	$31,699,161	$80,483,967	$30,893,000	NO Shortfall
Vermont	$0	$3,813,156	$3,813,156	$4,902,630	$12,528,942	$2,858,000	NO Shortfall
Virginia	$0	$53,437,771	$55,714,814	$76,254,851	$185,407,436	$83,206,000	NO Shortfall
Washington	$25,419,765	$50,326,484	$50,326,484	$64,705,479	$190,778,212	$34,880,000	NO Shortfall
West Virginia	$12,081,320	$15,641,332	$18,760,354	$24,422,724	$70,905,730	$32,740,000	NO Shortfall
Wisconsin	$36,731,734	$0	$43,504,958	$51,870,414	$132,107,106	$102,653,000	NO Shortfall
Wyoming	$0	$5,480,750	$4,952,110	$6,364,535	$16,797,395	$5,746,000	NO Shortfall
TOTAL STATES ONLY	$733,125,920	$2,381,639,402	$3,022,698,180	$4,039,875,000	$10,177,338,502	$5,300,856,000	$236,986,934
COMMONWEALTHS AND TERRITORIES							
Puerto Rico	NA	NA	NA	NA	NA	NA	NA
Guam	NA	NA	NA	NA	NA	NA	NA
Virgin Islands	NA	NA	NA	NA	NA	NA	NA
American Samoa	NA	NA	NA	NA	NA	NA	NA
N. Mariana Islands	NA	NA	NA	NA	NA	NA	NA
TOTAL	NA	NA	NA	NA	NA	NA	NA
NATIONAL TOTAL	$733,125,920	$2,381,639,402	$3,022,698,180	$4,039,875,000	$10,177,338,502	$5,300,856,000	$236,986,934

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Key to Table 2—Calculation of the SCHIP Redistribution of the Unexpended Allotments for Fiscal Year: 2002

Table 2 Contains the calculation of States' FY 2002 redistribution.

Column/Description

Column A = *State.* Name of State, District of Columbia, the Commonwealth or Territory.

Column B = *FY 2002 Allotment.* This column contains the FY 2002 SCHIP allotments for all States, which were published in the **Federal Register** on October 26, 2001 (66 FR 54246) and in the correction notice on November 13, 2001 (66 FR 56902).

Column C = *Expenditures Applied Against FY 2002 Allotment.* This column contains the cumulative expenditures applied against the FY 2002 allotments, as reported and certified by all States through November 30, 2004.

Column D = *Unexpended FY 2002 Allotments Or ''Redistribution.''* This column contains the amounts of unexpended FY 2002 SCHIP allotments for States that did not fully expend the allotments during the 3-year period of availability for FY 2002 (FYs 2002 through 2004), and is equal to the difference between the amounts in Column B and Column C. For States that did fully expend their FY 2002 allotments during the period of availability, the entry in this column is ''REDISTRIBUTION.'' The MOE amount is added to the total of the amounts of the States' unexpended FY 2002 allotments in this column at the bottom of Column D. However, since the MOE is $0, $642,617,724 represents the total amount available for the FY 2002 redistribution ($642,617,724, the total unexpended FY 2002 allotments, plus $0, the MOE provision amount).

Column E = *Projected FY 2005 Shortfall.* This column contains the projected ''shortfall'' amounts for the redistribution States, taken from Column H, Table 1. If there is no projected shortfall for the redistribution State, the entry in this column is ''NO Shortfall.'' If the State is not a redistribution State, the entry in this column is ''na.'' For the Commonwealths and Territories, the entry in Column E is ''NA.''

Column F = *For Redistribution States Only FY 2002—FY 2004 Expenditures.* For the redistribution States only (States that have fully expended their FY 2002 allotments), this column contains the total amounts of such States' reported SCHIP/SCHIP-related expenditures for the years FY 2002 through FY 2004, representing the FY 2002 3-year period of availability. For those States, Commonwealths, and Territories that did not fully expend their FY 2002 allotments during the period of availability, the entry in Column F is ''NA.''

Column G = *Redistribution States Only FY 02–04 Expenditures Minus FY 02 Allotment.* This column contains the amounts of redistribution States' reported SCHIP/SCHIP-related expenditures for each of the years FY 2002 through FY 2004 minus the FY 2002 allotment, calculated as the entry in Column F minus the entry in Column B.

Column H = *For Redistribution States Percent Of Total Redistribution.* This column contains each redistribution State's redistribution percentage of the total amount available for redistribution, calculated as the entry in Column G divided by the total (for redistribution States only, and exclusive of the Commonwealths and Territories) of Column G.

Column I = *FY 2002 Redistributed Allotment Amounts.* This column contains the amounts of States' unexpended FY 2002 SCHIP allotments that are being redistributed to the redistribution States in addition to any shortfall amounts being provided to such States, calculated as the percentage in Column H multiplied by the total additional amount available for redistribution. For the 28 States that have fully expended their FY 2002 allotments, the additional FY 2002 redistribution amounts totals $398,883,304. For the Commonwealths and Territories that have fully expended their FY 2002 allotments, the amounts in Column I represent their respective proportionate shares (allocated based on their FY 2002 allotments) of the total amount available for redistribution to the Commonwealths and Territories, $6,747,486 (representing 1.05 percent of the total amount for redistribution of $642,617,724). For those States and the District of Columbia, that did not fully expend their FY 2002 allotments during the 3-year period of availability, the entry in Column I is ''NA.''

Column J = *FY 2005 Shortfall Amount.* This column contains the shortfall amounts for the redistribution States; the amounts in this column are the same as the entries in Column E. The total shortfall amount is $236,986,934.

Column K = *Total FY 2002 Redistribution Including FY 2005 Shortfall.* For the redistribution States, this column reflects the total FY 2002 redistribution including the FY 2005 shortfall amount, calculated as the sum of Column I and Column J. For the States and the District of Columbia, the total FY 2002 redistribution amount in FY 2005 is $635,870,238. For the Commonwealths and Territories, the total FY 2002 redistribution amount in FY 2005 is $6,747,486. The total FY 2002 redistribution amount available nationally is $642,617,724.

BILLING CODE 4120–01–P

TABLE 2 - CALCULATION OF THE REDISTRIBUTION OF THE UNEXPENDED SCHIP ALLOTMENTS FOR FISCAL YEAR: 2002

Total Unexpended FY 2002 Allotments (not including MOE):	$642,617,724
FY 2002 MOE Amount:	$0
Total Unexpended FY 2002 Allotments (including MOE) /1:	$642,617,724
Total Needed for Redistribution for Territories /2:	$6,747,486
Total Needed for SHORTFALL /3:	$236,986,934
Total (Territory Redistribution + SHORTFALL):	$243,734,420
Total Available for Redistribution to States /4:	$398,883,304

State	CALCULATION OF UNEXPENDED FY 2002 ALLOTMENTS: FY 2002 Allotment	Expenditures Applied Against FY 2002 Allotment	Unexpended FY 2002 Allotments or "REDISTRIBUTION"	Projected FY 2005 Shortfall	For Redistribution States Only FY 2002 - FY 2004 Expenditures	Redistribution States Only FY 02-04 Expenditures Minus FY 02 Allotment (Col F - B)	For Redistribution States Percent of Total Redistribution (Col G/Sum of Col G)	FY 2002 Redistributed Allotment Amounts (Col H x Amount Available for Redistribution)	FY 2005 Shortfall Amounts (Col E)	Total FY 2002 Redistribution Including FY 2005 Shortfall (Col I + J)
A	B	C	D	E	F	G	H	I	J	K
Alabama	$48,585,422	$48,585,422	REDISTRIBUTION	NO Shortfall	$199,134,364	$150,548,932	2.2559%	$8,998,424	NO Shortfall	$8,998,424
Alaska	$6,968,138	$6,968,138	REDISTRIBUTION	NO Shortfall	$64,407,563	$57,439,425	0.8607%	$3,433,195	NO Shortfall	$3,433,195
Arizona	$87,166,211	$87,166,211	REDISTRIBUTION	$47,360,814	$572,329,176	$485,162,965	7.2699%	$28,998,558	$47,360,814	$76,359,372
Arkansas	$36,291,812	$0	$36,291,812	na	NA	NA	NA	NA	na	$0
California	$528,446,560	$405,981,074	$122,465,486	na	NA	NA	NA	NA	na	$0
Colorado	$34,266,951	$28,302,704	$5,964,247	na	NA	NA	NA	NA	na	$0
Connecticut	$25,993,944	$0	$25,993,944	na	NA	NA	NA	NA	na	$0
Delaware	$8,520,205	$0	$8,520,205	na	NA	NA	NA	NA	na	$0
District of Columbia	$7,849,329	$1,916,909	$5,932,420	na	NA	NA	NA	NA	na	$0
Florida	$164,157,649	$164,157,649	REDISTRIBUTION	NO Shortfall	$804,219,732	$640,062,083	9.5910%	$38,256,995	NO Shortfall	$38,256,995
Georgia	$104,986,194	$104,986,194	REDISTRIBUTION	NO Shortfall	$500,526,957	$395,540,763	5.9270%	$23,641,771	NO Shortfall	$23,641,771
Hawaii	$9,463,732	$4,598,741	$4,864,991	na	NA	NA	NA	NA	na	$0
Idaho	$16,800,022	$8,768,456	$8,031,567	na	NA	NA	NA	NA	na	$0
Illinois	$127,220,093	$127,220,093	REDISTRIBUTION	NO Shortfall	$405,450,939	$278,230,846	4.1692%	$16,630,068	NO Shortfall	$16,630,068
Indiana	$47,030,390	$0	$47,030,390	na	NA	NA	NA	NA	na	$0
Iowa	$22,411,236	$22,411,236	REDISTRIBUTION	NO Shortfall	$98,883,470	$76,472,234	1.1459%	$4,570,803	NO Shortfall	$4,570,803
Kansas	$21,978,619	$21,978,619	REDISTRIBUTION	NO Shortfall	$112,416,518	$90,437,899	1.3552%	$5,405,542	NO Shortfall	$5,405,542
Kentucky	$38,435,891	$38,435,891	REDISTRIBUTION	NO Shortfall	$212,608,301	$174,172,410	2.6099%	$10,410,417	NO Shortfall	$10,410,417
Louisiana	$57,891,885	$57,891,885	REDISTRIBUTION	NO Shortfall	$237,884,772	$180,192,887	2.7001%	$10,770,265	NO Shortfall	$10,770,265
Maine	$9,994,099	$9,994,099	REDISTRIBUTION	NO Shortfall	$64,101,148	$54,107,049	0.8108%	$3,234,019	NO Shortfall	$3,234,019
Maryland	$33,927,307	$33,927,307	REDISTRIBUTION	NO Shortfall	$363,324,885	$329,397,578	4.9359%	$19,688,343	NO Shortfall	$19,688,343
Massachusetts	$45,316,822	$45,316,822	REDISTRIBUTION	NO Shortfall	$250,641,972	$205,323,150	3.0767%	$12,272,320	NO Shortfall	$12,272,320
Michigan	$96,893,382	$96,893,382	REDISTRIBUTION	NO Shortfall	$259,858,138	$162,964,756	2.4419%	$9,740,527	NO Shortfall	$9,740,527
Minnesota	$30,041,660	$30,041,660	REDISTRIBUTION	$17,867,134	$201,863,946	$171,822,286	2.5717%	$10,257,993	$17,867,134	$27,925,127
Mississippi	$37,917,154	$37,917,154	REDISTRIBUTION	$22,247,451	$260,297,137	$222,379,983	3.3323%	$13,291,820	$22,247,451	$35,539,271
Missouri	$48,918,455	$48,918,455	REDISTRIBUTION	NO Shortfall	$213,982,032	$166,063,577	2.5184%	$10,045,287	NO Shortfall	$10,045,287
Montana	$10,932,698	$10,932,698	REDISTRIBUTION	NO Shortfall	$38,461,187	$27,528,492	0.4126%	$1,645,399	NO Shortfall	$1,645,399
Nebraska	$14,161,451	$14,161,451	REDISTRIBUTION	NO Shortfall	$72,003,489	$57,842,038	0.8667%	$3,457,262	NO Shortfall	$3,457,262
Nevada	$27,813,889	$10,758,889	$16,855,000	na	NA	NA	NA	NA	na	$0
New Hampshire	$9,091,578	$0	$9,091,578	na	NA	NA	NA	NA	na	$0
New Jersey	$69,478,513	$69,478,513	REDISTRIBUTION	$131,781,144	$737,019,513	$667,541,000	10.0028%	$39,899,431	$131,781,144	$171,680,575
New Mexico	$33,494,942	$0	$33,494,942	na	NA	NA	NA	NA	na	$0
New York	$233,993,235	$233,993,235	REDISTRIBUTION	NO Shortfall	$1,020,662,967	$786,669,732	11.7879%	$47,019,845	NO Shortfall	$47,019,845
North Carolina	$81,129,294	$81,129,294	REDISTRIBUTION	NO Shortfall	$382,983,381	$301,854,087	4.5231%	$18,042,047	NO Shortfall	$18,042,047
North Dakota	$5,332,879	$5,181,951	$150,928	na	NA	NA	NA	NA	na	$0
Ohio	$108,125,285	$108,125,285	REDISTRIBUTION	NO Shortfall	$434,668,938	$326,543,653	4.8931%	$19,517,761	NO Shortfall	$19,517,761
Oklahoma	$45,583,004	$7,463,767	$38,119,237	na	NA	NA	NA	NA	na	$0
Oregon	$37,597,497	$0	$37,597,497	na	NA	NA	NA	NA	na	$0
Pennsylvania	$101,603,820	$101,603,820	REDISTRIBUTION	NO Shortfall	$350,930,277	$249,326,457	3.7360%	$14,902,431	NO Shortfall	$14,902,431
Rhode Island	$7,473,463	$7,473,463	REDISTRIBUTION	$17,930,391	$98,375,316	$90,901,853	1.3621%	$5,433,273	$17,930,391	$23,363,664
South Carolina	$47,303,777	$40,906,239	$6,397,538	na	NA	NA	NA	NA	na	$0
South Dakota	$5,941,727	$5,941,727	REDISTRIBUTION	NO Shortfall	$28,647,971	$22,706,244	0.3402%	$1,357,168	NO Shortfall	$1,357,168
Tennessee	$61,964,136	$0	$61,964,136	na	NA	NA	NA	NA	na	$0
Texas	$301,839,575	$197,200,669	$104,638,906	na	NA	NA	NA	NA	na	$0
Utah	$23,017,975	$22,259,242	$758,733	na	NA	NA	NA	NA	na	$0
Vermont	$3,740,343	$1,898,563	$1,841,780	na	NA	NA	NA	NA	na	$0
Virginia	$54,662,752	$35,249,201	$19,413,551	na	NA	NA	NA	NA	na	$0
Washington	$42,446,166	$0	$42,446,166	na	NA	NA	NA	NA	na	$0
West Virginia	$16,850,270	$16,850,270	REDISTRIBUTION	NO Shortfall	$84,874,650	$68,024,380	1.0193%	$4,065,869	NO Shortfall	$4,065,869
Wisconsin	$39,374,631	$39,374,631	REDISTRIBUTION	NO Shortfall	$271,870,736	$232,496,105	3.4838%	$13,896,468	NO Shortfall	$13,896,468
Wyoming	$5,297,121	$544,451	$4,752,670	na	NA	NA	NA	NA	na	$0
TOTAL STATES ONLY	$3,082,125,000	$2,439,507,276	$642,617,724	$236,986,934	$8,342,029,465	$6,673,552,844	100.0000%	$398,883,304	$236,986,934	$635,870,238
COMMONWEALTHS AND TERRITORIES										
Puerto Rico	$30,296,700	$30,296,700	REDISTRIBUTION	NA	NA	NA	NA	$6,180,807	NA	$6,180,807
Guam	$1,157,625	$1,157,625	REDISTRIBUTION	NA	NA	NA	NA	$236,162	NA	$236,162
Virgin Islands	$859,950	$859,950	REDISTRIBUTION	NA	NA	NA	NA	$175,435	NA	$175,435
American Samoa	$396,900	$396,900	REDISTRIBUTION	NA	NA	NA	NA	$80,970	NA	$80,970
N. Mariana Islands	$363,825	$363,825	REDISTRIBUTION	NA	NA	NA	NA	$74,222	NA	$74,222
TOTAL	$33,075,000	$33,075,000	$0	NA	NA	NA	$0	$6,747,486	NA	$6,747,486
								(Totals to "1.05%" Amount)		
NATIONAL TOTAL	$3,115,200,000	$2,472,582,276	$642,617,724	$236,986,934				$405,630,790	$236,986,934	$642,617,724
FY 2002 MOE AMOUNT		-								Total FY 2002
TOTAL WITH MOE AMOUNT	$3,115,200,000	$2,472,582,276	$642,617,724							Redistributed Allotments

Footnotes:

/1 The total unexpended FY 2002 allotments are $642,617,724, calculated as $642,617,724 (the total unexpended FY 2002 allotments, not including the maintenance of effort (MOE) amount) plus $0,000 (the MOE amount)

/2 $6,747,486 is the total amount needed for redistribution to the commonwealths and territories, calculated as 1.05 percent of $642,617,724 (the total unexpended FY 2002 allotments, including the MOE amount)

/3 $236,986,934 is the total needed for SHORTFALL

/4 $398,883,304 is the total redistribution to the states (excluding the SHORTFALL), calculated as $642,617,724 (total unexpended FY 2002 allotments including the MOE amount) reduced by $236,986,934 (the total FY 2002 SHORTFALL) and $6,747,486 (total jur

III. Regulatory Impact Statement

[If you choose to comment on issues in this section, please include the caption ''Regulatory Impact Statement'' at the beginning of your comments.]

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980 Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). We have determined that this notice is not a major rule. The States' FY 2002 SCHIP allotments, totaling $3,115,200,000 were originally published in a notice in the **Federal Register** and allotted to States in FY 2002. This notice with comment period does not revise the amount of the 2002 allotment originally made available to the States, but rather, sets forth the procedure for redistributing those FY 2002 allotments, which were unexpended at the end of FY 2004 (the end of the 3-year period of availability referenced in section 2104(e) of the Act), and announces the amount of the FY 2002 allotments to be redistributed to the redistribution States and the availability of such unexpended FY 2002 allotment amounts to the end of 2005. Because participation in the SCHIP program on the part of States is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimbursed by the Federal Government are made voluntarily. This notice will not create an unfunded mandate on States, tribal, or local governments. Therefore, we are not required to perform an assessment of the costs and benefits of this notice.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this notice and have determined that it does not significantly affect States' rights, roles, and responsibilities.

Low-income children will benefit from payments under this program through increased opportunities for health insurance coverage. We believe this notice will have an overall positive impact by informing States, the District of Columbia, and Commonwealths and Territories of the extent to which they are permitted to expend funds under their child health plans using the FY 2002 allotment's redistribution amounts.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

IV. Waiver of Notice of Proposed Rulemaking and Delayed Effective Date

[If you choose to comment on issues in this section, please include the caption ''Waiver of Notice of Proposed Rulemaking and Delayed Effective Date'' at the beginning of your comments.]

We ordinarily publish a proposed notice in the **Federal Register** to provide a period of public comment before the provisions of a notice, such as this, are effective in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the APA (5 U.S.C 553(d)). However, we can waive both the notice of proposed rulemaking and the 30-day delay in effective date if the Secretary finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons in the notice.

We find there is good cause to waive notice of proposed rulemaking and the delay in the effective date of this issuance of the FY 2002 redistributed allotments because such notice of proposed rulemaking and the delay in the effective date would be contrary to the public interest.

We determined the amounts of the FY 2002 redistributed allotments as expeditiously as possible in order to make them available to the States as soon as possible. To that end, all States had until November 30, 2004 to submit their required fourth quarter FY 2004 expenditure reports. In determining the FY 2002 redistributed amounts, we used State projected expenditures as contained in the most recent (November, 2004) States' quarterly budget report submissions. The redistributed FY 2002 allotments make available Federal funds to the recipient redistribution States, which is especially important for those redistribution States that may need such funds.

Furthermore, under section 2104(e) of the Act, redistributed allotments are only available through the end of the fiscal year in which they are redistributed; in the case of the FY 2002 redistributed allotments, that would be until the end of FY 2005 (September 30, 2005). We believe it is important that we issue these redistributed allotments as soon as possible. Therefore, in the interest of ensuring that the FY 2002 redistributed allotments are made available without delay to those States that need such funds, we are waiving notice of proposed rulemaking and the 30-day delay in effective date, and are publishing this issuance of the **Federal Register** as a notice with comment period.

Accordingly, we provisionally will make the FY 2002 redistributed funds available to any State that has spent all of its available SCHIP allotments effective immediately upon publication of this notice with comment period. These FY 2002 redistributed funds are subject to final adjustment based on comments received in response to this notice with comment period. Any such adjustments resulting from review and analysis of comments will be published in the **Federal Register** within 60 days of the close of the comment period. (Section 1102 of the Social Security Act (42 U.S.C. 1302).)

(Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program)

Dated: January 5, 2005.

Mark McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Dated: January 14, 2005.

Tommy G. Thompson,

Secretary.

[FR Doc. 05–1139 Filed 1–18–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0559]

Joint Meeting of the Arthritis Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Arthritis Advisory Committee and the Drug Safety and Risk Management Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 16, 2005, from 8 a.m. to 6 p.m., and on February 17 and 18, 2005, from 8 a.m. to 5 p.m.

Addresses: Electronic comments should be submitted to *http://www.fda.gov/dockets/ecomments*. Select ''2004N–0559—Overall Benefit to Risk Considerations for COX-2 Selective Nonsteroidal Anti-inflammatory Drugs and Related Agents'' and follow the prompts to submit your statement. Written comments should be submitted to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments received by February 4, 2005, will be provided to the committee before the meeting.

Location: Hilton Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Kimberly Littleton Topper or Dornette Spell-LeSane, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, FAX: 301–827–6801, e-mail: *topperk@cder.fda.gov* or *spelllesaned@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 3014512532 or 3014512535. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committees will discuss the overall benefit to risk considerations (including cardiovascular and gastrointestinal safety concerns) for COX-2 selective nonsteroidal anti-inflammatory drugs and related agents. The background material will become available no later than the day before the meeting and will be posted on FDA's Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm* under the headings ''Arthritis Advisory Committee'' or ''Drug Safety and Risk Management Advisory Committee'' (click on the year 2005 and scroll down to the above named committee meetings).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the Division of Dockets Management (see *Addresses*). Oral presentations from the public will be scheduled between approximately 1 p.m. and 3 p.m. on February 17, 2005. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 4, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Tony Slater at 301–827–7001, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 11, 2005.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 05–958 Filed 1–18–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Transmissible Spongiform Encephalopathies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Transmissible Spongiform Encephalopathies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 8, 2005, from 8 a.m. to 5:30 p.m.

Location: Hilton Hotel, 8727 Colesville Rd., Silver Spring, MD.

Contact Person: William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512392. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the following: (1) Risk assessments for potential exposure to the variant Creutzfeldt-Jakob disease (vCJD) agent in plasma products, (2) possible vCJD risk from investigational coagulation Factor XI manufactured in the 1990s from plasma of donors residing in the United Kingdom, and (3) potential deferral of blood and plasma donors for history of transfusion in France and other European countries.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 1, 2005. Oral presentations from the public will be scheduled between approximately 11:50 a.m. and 12:30 p.m., 3:15 p.m. and 3:30 p.m., and 4:15 p.m. and 4:35 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 3, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact William Freas or Sheila D. Langford at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 11, 2005.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 05–957 Filed 1–18–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Veterinary Medicine Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Veterinary Medicine Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 31, 2005, from 8 a.m. to 5:30 p.m.

Location: DoubleTree Hotel, Plaza II and III, 1750 Rockville Pike, Rockville MD.

Contact Person: Aleta Sindelar, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7519 Standish Pl., Rockville MD 20855, 301–827–4515, or e-mail: *asindela@cvm.fda.gov*. Please call the FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512548, for up-to-date information on this meeting.

Agenda: The committee will discuss and make recommendations regarding the voluntary recall of the drug product, PROHEART 6 (NADA 141–189), manufactured by Fort Dodge Animal Health. The committee will also discuss the Center for Veterinary Medicine's risk management strategy. The background material for this meeting will be posted on the Internet when available and no later than 1 business day before the meeting at *http://www.fda.gov/ohrms/dockets/ac/04acdocs.htm* (Scroll down to the appropriate committee link).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 21, 2005. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on January 31, 2005. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by January 21, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

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FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Aleta Sindelar at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 11, 2005.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 05–956 Filed 1–18–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

[Funding Opportunity Number HHS–2005–IHS–SP–0001; CFDA Numbers: 93.123, 93.971, and 93.972]

Health Professions Preparatory, Health Professions Pregraduate and Indian Health Professions Scholarship Programs; Announcement Type: Initial

Key Dates:

Application Deadline: March 28, 2005.

Application Review: April 11–April 15, 2005.

Application Notification: Third week of July 2005.

Anticipated Award Start Date: August 31, 2005.

I. Funding Opportunity Description

The Indian Health Service (IHS) is committed to encouraging American Indians and Alaska Natives to enter the health professions and to assuring the availability of Indian health professionals to serve Indians. The IHS is committed to the recruitment of students for the following programs:

- The Indian Health Professions Preparatory Scholarships authorized by section 103(b)(1) of the Indian Health Care Improvement Act (IHCIA), Public Law 94–437, as amended by Public Law 100–713, Public Law 102–573, and Public Law 104–313, CFDA #93.123.
- The Indian Health Professions Pregraduate Scholarships section 103(b)(2) of the Indian Health Care Improvement Act (IHCIA), Public Law 94–437, as amended by Public Law 100–713, Public Law 102–573, and Public Law 104–313, CFDA #93.971.
- The Indian Health Professions Scholarship section 104 of the IHCIA, Public Law 94–437, as amended by Public Law 100–713, by Public Law 102–573, and by Public Law 104–313, CFDA #93.972.

Full-time and part-time scholarships will be funded for each of the three scholarship programs. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010*, a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Education and Community-Based Programs. Potential applicants may obtain a copy of *Healthy People 2010*, (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2010* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

II. Award Information

Awards under this initiative will be administered using the institutional grant mechanism of the IHS.

Estimated Funds Available: An estimated $7.8 million will be available for FY 2005 awards.

Anticipated Number of Awards: Approximately 200 awards will be made under the Health Professions Preparatory and Pregraduate Scholarship Programs for Indians. The awards are for 10 months in duration and the average award to a full-time student is approximately $23,000. An estimated 340 awards will be made under the Indian Health Scholarship (Professions) Program. The awards are for 12 months in duration and the average award to a full-time student is for approximately $25,000. In FY 2005, an estimated $3,410,000 is available for continuation awards, and an estimated $4,485,000 is available for new awards.

Project Period—The project period will vary based on the type of scholarship for which the grantee applies.

Max Project Period—The project period for the Health Professions Preparatory Scholarship support is limited to 2 years for full-time students and the part-time equivalent of 2 years, not to exceed 4 years for part-time students. The project period for the Health Professions Pregraduate Scholarship Support is limited to 4 years for full-time students and the part-time equivalent of 4 years, not to exceed 8 years for part-time students. The Indian Health Professions Scholarship support is limited to 4 years for full-time students and the part-time equivalent of 4 years, not to exceed 8 years for part-time students.

III. Eligibility Information

1. Eligible Applicants

The Health Professions Preparatory Scholarship awards are made to American Indians (state recognized Tribal members, federally recognized Tribal members, and first and second degree descendants of Tribal members), or Alaska Natives who:

- Have successfully completed high school education or high school equivalency; and
- Have been accepted for enrollment in a compensatory, pre-professional general education course or curriculum.

The Health Professions Pregraduate Scholarship awards are made to American Indians (state recognized Tribal members, federally recognized Tribal members, and first and second degree Tribal members), or Alaska Natives who:

- Have successfully completed high school education or high school equivalency; and
- Have been accepted for enrollment or are enrolled in an accredited pregraduate program leading to a baccalaureate degree in pre-medicine or pre-dentistry.

The Indian Health Scholarship (Professions) may be awarded only to an individual who is a member of a federally recognized Indian Tribe as provided by section 4(c), and 4(d) of the IHCIA. Membership in a Tribe recognized only by a state does not meet this statutory requirement. To receive an Indian Health Scholarship (Professions) an otherwise eligible individual must be enrolled in an appropriately accredited school and pursuing a course of study in a health profession as defined by section 4(n) of the IHCIA.

2. Cost Sharing/Matching

The Scholarship Program does not require matching funds or cost sharing to participate in the competitive grant process.

IV. Application and Submission Information

1. Address To Request Application Package

Applicants are responsible for contacting and requesting an application packet from their IHS Area coordinator. They are listed on the IHS Web site at *http://www.ihs.gov/JobsCareerDevelop/DHPS/Scholarships/SCoordinator_Directory.asp*. This information is listed below. Please review the following list to identify the appropriate IHS Area coordinator for your state. Application packets may be obtained by calling or writing to the following individuals listed below:

IHS area office and States / locality served	Scholarship coordinator / address
Aberdeen Area IHS: Iowa, Nebraska, North Dakota, South Dakota	Ms. Kim Lawrence, IHS Area Coordinator, Aberdeen Area IHS, 115 4th Avenue, SE., Aberdeen, SD 57401, Tele: (605) 226–7532.
Alaska Native Tribal Health Consortium: Alaska	Ms. Evangelyn Dotomain, IHS Area Coordinator, 4000 Ambassador Drive, Anchorage, Alaska 99508, Tele: (907) 729–1913.
Albuquerque Area IHS: Colorado, New Mexico	Ms. Arnissa Vallo, IHS Area Coordinator, Albuquerque Area IHS, 5300 Homestead Road, NE., Albuquerque, NM 87110, Tele: 1–800–382–3027.
Bemidji Area IHS: Illinois, Indiana, Michigan, Minnesota, Wisconsin	Mr. Tony Buckanaga, IHS Area Coordinator, Bemidji Area IHS, 522 Minnesota Avenue, NW., Room 209, Bemidji, MN 56601, Tele: (218) 444–0486.
Billings Area IHS: Montana, Wyoming	Mr. Sandy Macdonald, IHS Area Coordinator, Billings Area IHS, Area Personnel Office, P.O. Box 36600, 2900 4th Avenue, North, Billings, MT 59103, Tele: (406) 247–7210.
California Area IHS: California, Hawaii	Ms. Mona Celli, IHS Area Coordinator, California Area IHS, 650 Capitol Mall, Suite 7–100, Sacramento, CA 95814, Tele: (916) 930–3981.
Nashville Area IHS: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, District of Columbia.	Ms. Arnissa Vallo, IHS Area Coordinator, Nashville Area IHS, 5300 Homestead Road, NE., Albuquerque, NM 87110, Tele: 1–800–382–3027.
Navajo Area IHS: Arizona, New Mexico, Utah	Ms. Roselinda Allison, IHS Area Coordinator, Navajo Area IHS, P.O. Box 9020, Window Rock, AZ 86515, Tele: (928) 871–1358.
Oklahoma City Area IHS: Kansas, Missouri, Oklahoma	Mr. Jim Ingram, IHS Area Coordinator, Oklahoma City Area IHS, HC 67, Box 132, Marietta, OK 73448, Tele: (580) 276–5983.
Phoenix Area IHS: Arizona, Nevada, Utah	Mr. Al Peyketewa, IHS Area Coordinator, Phoenix Area IHS, Two Renaissance Square, 40 North Central Avenue, Suite #510, Phoenix, AZ 85004, Tele: (602) 364–5252.
Portland Area IHS: Idaho, Oregon, Washington	Ms. Athena Bezahaloni, IHS Area Coordinator, Portland Area IHS, 1220 SW. Third Area IHS, Rm. 440e, Portland, OR 97204–2892, Tele: (503) 326–2625.
Tucson Area IHS: Arizona, Texas	Ms. Reanetta Siquieros, IHS Area Coordinator, Tucson Area IHS, 7900 South "J." Stock Rd., Tucson, AZ 85746, Tele: (520) 295–2440.

2. Content and Form of Application Submission

Each applicant will be responsible for submitting the completed application (Forms IHS–856–1, through 856–8) to their IHS Area coordinator. Electronic applications are not being accepted for this cycle. The application will be considered complete if the following documents are included.

- Application Checklist.

• Original Signed Complete Application Form IHS–856 (Continuation Students—Data Sheet).
• Letter of Acceptance from College/ Proof of Application to Health Professions Program.
• Official Transcripts for All Colleges.
• Cumulative GPA: Applicants Calculation.
• Documents for Indian Eligibility.

A. If you are a member of a federally recognized Tribe (recognized by the Secretary of the Interior), provide evidence of membership such as:

(1) Certification of Tribal enrollment by the Secretary of the Interior, acting through the Bureau of Indian Affairs (BIA Certification: Form 4432—Category A or D, which ever is applicable); or

(2) In the absence of BIA certification, documentation that you meet requirements of Tribal membership as prescribed by the charter, articles of incorporation or other legal instrument of the Tribe and have been officially designated as a Tribal member as evidenced by an accompanying document signed by an authorized Tribal official, or

(3) Other evidence of Tribal membership satisfactory to the Secretary of the Interior.

B. If you are a member of a Tribe terminated since 1940 or a State recognized Tribe, provide official documentation that you meet the requirements of Tribal membership as prescribed by the charter, articles of incorporation or other legal instrument of the Tribe and have been officially designated as a Tribal member as evidenced by an accompanying document signed by an authorized Tribal official; or other evidence, satisfactory to the Secretary of the Interior, that you are a member of the Tribe. In addition, if the terminated or state recognized Tribe of which you are a member is not on a list of such Tribes published by the Secretary of the Interior in the **Federal Register**, you must submit an official signed document that the Tribe has been terminated since 1940 or is recognized by the state in which the Tribe is located in accordance with the law of that state.

C. If you are not a Tribal member but are a natural child or grandchild of a Tribal member, you must submit: (1) Evidence of that fact, *e.g.*, your birth certificate and/or your parent's birth certificate showing the name of the Tribal member: and (2) evidence of your parent's or grandparent's Tribal membership in accordance with paragraphs A and B. The relationship to the Tribal member must be clearly documented. Applications that do not provide the required documentation will be deemed incomplete and will be returned to the applicant.

Note: If you meet the criteria of B or C you are eligible only for the Preparatory or Pregraduate Scholarships.

• Two Faculty/Employer Evaluations with original signature.
• Reasons for Requesting Scholarship.
• Delinquent Debt Form.
• Course Curriculum Verification with signature.
• Acknowledgment Card.
• Section 103/103P Agreement Signed and Dated (Form IHS–817).
• Curriculum for Major.

Health Professions Applicants Only:

• Section 104 Contract Signed and Dated (Form IHS–818).
• Health Related Experience (MPH only)—Optional Form.

3. Submission Dates and Times

Application Receipt Date: The application deadline for both new and continuing applicants is Monday, February 28, 2005. Applications shall be considered as meeting the deadline if they are received by the appropriate IHS Area Coordinator on the deadline date or postmarked on or before the deadline date. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing. Applications will not be considered for funding. Once the application is received, the applicant will receive an ''Acknowledge of Receipt of Application'' (IHS–815) card that is included in the application packet.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

No more than 5% of available funds will be used for part-time scholarships this fiscal year. Students are considered part-time if they are enrolled for a minimum of 6 hours of instruction and are not considered in full-time status by their college/university. Documentation must be received from part-time applicants that their school and course curriculum allows less than full-time status. Both part-time and full-time scholarship awards will be made in accordance with 42 CFR parts 36.320, 36.370 and 36.330 incorporated in the application materials; and for Health Professions Scholarship Program for Indians.

6. Other Submission Requirements

Applicants are responsible for contacting and requesting an application packet from their IHS Area Coordinator. Electronic applications are not being accepted for this cycle.

V. Application Review Information

1. Criteria

Applications will be reviewed and scored with the following criteria:

• Need of the IHS. Applicants are considered for scholarship awards based on their desired career goals and how these goals relate to current Indian health manpower needs. Applications for each health career category are reviewed and ranked separately.
• Academic Performance (40 points). Applicants are rated according to their academic performance as evidenced by transcripts and faculty evaluations. In cases where a particular applicant's school has a policy not to rank students academically, faculty members are asked to provide a personal judgement of the applicant's achievement. Health Professions applicants with a cumulative GPA below 2.0 are not eligible to apply.
• Faculty/Employer Recommendations (30 points). Applicants are rated according to evaluations by faculty members and current and/or former employers regarding the applicant's potential in the chosen health related professions.
• Stated Reasons for Asking for the Scholarship and Stated Career Goals (30 points). Applicants must provide a brief written explanation of reasons for asking for the scholarship and of their career goals. The applicant's narrative will be judged on how well it is written and content.
• Applicants who are closest to graduation or completion are awarded first. For example, senior and junior applicants under the Health Professions Pregraduate Scholarship receive funding before freshmen and sophomores.
• Priority Categories. The following is a list of health professions that will be funded in each scholarship program in FY 2005.
• Health Professions Preparatory Scholarships.

A. Pre-Dietetics.
B. Pre-Engineering (Environmental Health).
C. Pre-Medical Technology.
D. Pre-Nursing.
E. Pre-Pharmacy.
F. Pre-Physical Therapy (Jr and Sr undergraduate years).
G. Pre-Social Work (Jr and Sr undergraduate years).

• Health Professions Pregraduate Scholarships.

A. Pre-Dentistry.
B. Pre-Medicine.
• Indian Health Scholarships (Professions).
A. Associate Degree Nurse.
B. Chemical Dependency Counseling: Baccalaureate and Masters level.
C. Clinical Psychology: Ph.D. only.
D. Counseling Psychology: Ph.D. only.
E. Dental Hygiene: B.S.
F. Dentistry: D.D.S. or D.M.D.
G. Diagnostic Radiology Technology: Certificate, Associate, and B.S.
H. Dietitian: B.S.
I. Engineering (Environmental Health): B.S.
J. Environmental Health (Sanitarian): B.S.
K. Health Care Administration: Masters Level Only.
L. Health Education: Masters Level Only.
M. Health Records: R.H.I.T and R.H.I.A.
N. Injury Prevention Specialist.
O. Medical Technology: B.S.
P. Medicine: Allopathic and Osteopathic.
Q. Nurse: B.S.
R. Nurse: Nurse Anesthetist
*(Priority consideration will be given to Registered Nurses employed by the Indian Health Service; in a program assisted under a contract entered into under the Indian Self-Determination Act; or in a program assisted under Title V of the Indian Health Care Improvement Act.)
S. Optometry.
T. Pharmacy: Pharm D.
U. Physician Assistant.
V. Physical Therapy: M.S. and D.P.T.
W. Podiatry: D.P.M.
X. Public Health: M.P.H. only (Applicants must be enrolled or accepted in a school of public health).
Y. Public Health Nutrition: Masters level only.
Z. Respiratory Therapy: Associate.
AA. Social Work: Masters level only (Concentration in Mental Health).
BB. Ultrasonography (Prerequisite: Diagnostic Radiology Technology).

2. Review and Selection Process

The applications will be reviewed & scored by the IHS Scholarship Programs' Application Review Committee appointed by the IHS. Each reviewer will not be allowed to review an application from his/her area or his/her own Tribe. Each application will be reviewed by 3 reviewers. The average score of the three reviews provide the final Ranking Score for each applicant. To determine the ranking of each applicant, these scores are sorted from the highest to the lowest within each scholarship, health discipline, date of graduation, and score. If several students have the same date of graduation and score within the same discipline, computer ranking list will randomly sort and will not be sorted by alphabetical name. Selections for recommendations to the Director, IHS, are then made from the top of each ranking list to the extent that funds allocated by the IHS among the three scholarships are available for obligation.

VI. Award Administration Information

1. Award Notices

Applicants will be notified in writing during the first week of July, 2005. An Award Letter will be issued to successful applicants. Unsuccessful applicants will be notified in writing, which will include a brief explanation of the reasons the application was not successful and provide the name of the IHS official to contact if more information is desired.

2. Administrative and National Policy Requirements

Awards for the Indian Health Scholarships (Professions) will be made in accordance with 42 CFR 36.330. Recipients shall incur a service obligation prescribed under section 338A of the Public Health Service Act (42 U.S.C. 254l) which shall be met by service:

(1) In the Indian Health Service;

(2) In a program conducted under a contract or compact entered into under the Indian Self-Determination Act and Education Assistance Act (Public Law 93–638) and its amendments.

(3) In a program assisted under Title V of the Indian Health Care Improvement Act (Public Law 94–437) and its amendments; and

(4) In private practice of his or her profession, if the practice (a) is situated in a health professional shortage area, designated in regulations promulgated by the Secretary and (b) addresses the health care needs of a substantial number of Indians as determined by the Secretary in accordance with guidelines of the Service.

Pursuant to the Indian Health Amendments of 1992 (Public Law 104–313), a recipient of an Indian Health Professions Scholarship may, at the election of the recipient, meet his/her active duty service obligation prescribed under section 338A of the Public Health Service Act (42 U.S.C. 254l) by a program specified in options (1)–(4) above that:

(i) Is located on the reservation of the Tribe in which the recipient is enrolled; or

(ii) Serves the Tribe in which the recipient is enrolled.

In summary, all recipients of the Indian Health Scholarship (Health Professions) are reminded that recipients of this scholarship incur a service obligation. Moreover, this obligation shall be served at a facility determined by the Director, IHS, consistent with IHCIA, Public Law 94–437, as amended by Public Law 100–713, and Public Law 102–573.

3. Reporting

Scholarship Program Minimum Academic Requirements. It is the policy of the IHS that a scholarship recipient awarded under the Health Professions Scholarship Program of the Indian Health Care Improvement Act maintain a 2.0 cumulative grade point average (GPA) each semester/quarter and be a full-time student (minimum of 12 credit hours considered by your school as full-time). A recipient of a scholarship under the health Professions Pre-graduate and Health Professions Preparatory Scholarship authority must maintain a good academic standing each semester/quarter and be a full time student (minimum of 12 credit hours or the number of credit hours considered by your school as full-time). In addition to the two requirements stated above, a Health Professions Scholarship program grantee must be enrolled in an approved/accredited school for a health professions degree. Part-time students for the three scholarship programs must also maintain a 2.0 cumulative GPA and must take at least 6 credit hours each semester/quarter but less than the number of hours considered full-time by your school. Scholarship grantees must be approved for part-time status at the time of scholarship award. Scholarship grantees may not change from part-time status to full-time status or vice versa in the same academic year. The following reports must be sent to the IHS Scholarship Program at the identified time frame. Each scholarship grantee will be provided with an IHS Scholarship Handbook where the below needed reports are located. If a scholarship grantee fails to submit these reports as required, they will be ineligible for continuation of scholarship support and scholarship award payments will be discontinued.

A. Recipient's Enrollment and Initial Progress Report

Within thirty (30) days from the beginning of each semester or quarter, scholarship grantees must submit a Recipient's Enrollment and Initial Progress Report (Form F–02 of the student handbook).

B. Transcripts

Within thirty (30) days from the end of each academic period, *i.e.*, semester, quarter, or summer session, scholarship grantees must submit an Official Transcript showing the results of the classes taken during that period.

C. Notification of Academic Problem/Change

If at any time during the semester/quarter, scholarship grantees are advised to reduce the number of credit hours for which they are enrolled below the minimum of 12 (or the number of hours considered by their school as full time) for a full-time student or at least 6 hours for part-time students; or if they experience academic problems, they must submit this report (page F–04 of student handbook).

D. Change of Status

- Change of Academic Status. Scholarship Grantees must immediately notify the IHS Area Coordinator if they are placed on academic probation, dismissed from school, or voluntarily withdraw for any reason (personal or medical).
- Change of Health Discipline. Scholarship Grantees may not change from the approved IHS Scholarship Program health discipline during the school year. If an unapproved change is made, scholarship payments will be discontinued.
- Change in Graduation Date. Any time that a change occurs in a scholarship grantee's expected graduation date, they must notify their IHS Area Coordinator immediately in writing. Justification must be attached from the school advisor.

VII. Agency Contacts

Please address application inquiries to the appropriate IHS Area Coordinator. Other programmatic inquiries may be addressed to Mr. Jess Brien, Chief, Scholarship Branch, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852; Telephone (301) 443–6197. (This is not a toll free number.) For grants information, contact Mr. Bernard Covers Up, Grants Scholarship Coordinator, Division of Grants Policy, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852; Telephone (301) 443–5204. (This is not a toll-free number.)

VIII. Other Information

Regulations at 42 CFR part 36.304 provide that the IHS shall, from time to time, publish a list of health professions eligible for consideration for the award of Indian Health Professions Preparatory and Pregraduate Scholarships and Indian Health Scholarships (Professions). Section 104(b)(1) of the IHCIA, as amended by the Indian Health Care Amendment of 1988, Public Law 100–713, authorizes the IHS to determine specific health professions for which Indian Health Scholarships will be awarded.

Interested individuals are reminded that the list of eligible health and allied health professions is effective for applicants for the 2005–2006 academic year. These priorities will remain in effect until superseded. Applicants for health and allied health professions not on the above priority list will be considered pending the availability of funds and dependent upon the availability of qualified applicants in the priority areas.

Dated: January 12, 2005.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 05–1030 Filed 1–18–05; 8:45 am]

BILLING CODE 4160–16–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–19085]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers: 1625–0036, 1625–0058, and 1625–0061

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded three Information Collection Reports (ICRs)—1625–0036, Plan Approval and Records for U.S. and Foreign Tank Vessels Carrying Oil in Bulk, 1625–0058, Application for Permit To Transport Municipal and Commercial Waste, and 1625–0061, Commercial Fishing Industry Vessel Safety Regulations—abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard on or before February 18, 2005.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2004–19085] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th St NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 and (b) OIRA at (202) 395–6566, or e-mail to OIRA at *oira-docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*. (b) OIRA does not have a Web site on which you can post your comments.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Ms. Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is (202) 267–2326.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, (202) 267–2326, for questions on these documents; or Ms. Andrea M. Jenkins, Program Manager, Docket Operations, (202) 366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard invites comments on the proposed collection of information to determine whether the collections are necessary for the proper performance of

the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the Information Collection Reports (ICR) addressed. Comments to DMS must contain the docket number of this request, [USCG 2004–19085]. Comments to OIRA are best assured of having their full effect if OIRA receives them on or before the 30th day after the publication of this request.

Public participation and request for comments: We encourage you to participate in this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2004–19085], indicate the specific section of this document or the ICR to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has already published the 60-day notice required by 44 U.S.C. 3506(c)(2) (69 FR 56782, September 22, 2004). That notice elicited one comment to information collection 1625–0036. The commenter states that the information collection is not adequate to protect the U.S. coastal environment and suggests keeping satellite records of our coastline and requiring foreign ships to notify the Coast Guard prior to entering our waters. In general, the comment is beyond the scope of this information collection. Information collection 1625–0036 aids the Coast Guard in determining if a tank vessel complies with certain safety and environmental protection standards. Tank vessel design, construction and system operating information must be submitted and/or maintained on board for compliance with these standards. Details of the collection can be found in the supporting statement in the docket. COI 1625–0036 is one of a number of Coast Guard information collections related to environmental protection and maritime security. For example, COI 1625–0100—not part of this notice—relates to the Coast Guard requirement that certain vessels report to the Coast Guard 96 hours in advance of arrival to a U.S. port.

Information Collection Requests

1. *Title:* Plan Approval and Records for U.S. and Foreign Tank Vessels Carrying Oil in Bulk.

OMB Control Number: 1625–0036.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and operators of vessels.

Form: None.

Abstract: This information collection aids the Coast Guard in determining if a vessel complies with certain safety and environmental protection standards. Plans/records for construction or modification of U.S. or foreign vessels submitted and/or maintained on board are needed for compliance with these standards.

Burden Estimates: The estimated burden is 582 hours a year.

2. *Title:* Application for Permit to Transport Municipal and Commercial Waste.

OMB Control Number: 1625–0058.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and operators of vessels.

Form: None.

Abstract: This information collection provides the basis for issuing or denying a permit for the transportation of municipal or commercial waste in the coastal waters of the United States.

Burden Estimates: The estimated burden is 69 hours a year.

3. *Title:* Commercial Fishing Industry Vessel Safety Regulations.

OMB Control Number: 1625–0061.

Type of Request: Extension of currently approved collection.

Affected Public: Owners, agents, individuals-in-charge of commercial fishing vessels, and insurance underwriters.

Form: None.

Abstract: This information collection is intended to improve safety on board vessels in the commercial fishing industry. The requirements apply to those vessels and to seamen on them.

Burden Estimates: The estimated burden is 7,720 hours a year.

Dated: January 7, 2005.

Ronald T. Hewitt,

Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 05–964 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–20082]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of open teleconference meeting.

SUMMARY: This notice announces a teleconference meeting of the National Offshore Safety Advisory Committee (NOSAC) on the proposed formation of a NOSAC subcommittee. NOSAC will meet to discuss the formation of a subcommittee on the application of the

Safety of Life at Sea (SOLAS) Convention to the various types of offshore support vessels working in foreign locations, including offshore supply vessels (OSVs), anchor handling vessels, liftboats, crew boats, dive support vessels, and seismic vessels.

DATES: The teleconference call will take place on Thursday, February 3, 2005, from 10 a.m. to 11 a.m. e.s.t. Written comments may be submitted on or before February 2, 2005.

ADDRESSES: Members of the public may participate by coming to Room 1303, U.S. Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593. We request that members of the public who plan to attend this meeting notify Mr. Jim Magill at (202) 267–1082 so that he may notify building security officials. Written comments should be sent to Commander J. M. Cushing, Executive Director of NOSAC, Commandant (G–MSO–2), 2100 Second Street, SW., Washington, DC 20593–0001; or by faxing (202) 267–4570. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Commander John Cushing, Executive Director of NOSAC, or Mr. Jim Magill, Assistant to the Executive Director, telephone (202) 267–1082, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: Members of the public may participate by dialing (202) 366–3920, Pass code: 9535. Public participation is welcome; however, the number of teleconference lines is limited and available on a first-come, first-served basis. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda

(1) Introduction of Committee members and the public.

(2) Discussion on forming a subcommittee on the application of the SOLAS Convention to the various types of offshore support vessels working in foreign locations.

(3) Committee vote on the formation of a subcommittee.

(4) Committee nominations and vote on subcommittee chairman.

The Chairman of NOSAC shall conduct the teleconference in a way that will, in his judgment, facilitate the orderly conduct of business. During the teleconference, the Committee welcomes public comment. The committee will make every effort to hear the views of all interested parties. Please note that the teleconference may close early if all business is finished. Written comments may be submitted on or before the day of the teleconference (*see* **ADDRESSES**).

Minutes

The teleconference will be recorded, and a summary will be available for the public review and copying 30 days following the teleconference meeting.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Jim Magill at (202) 267–1082 as soon as possible.

Dated: January 12, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 05–1151 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4800–C–18A]

Notice of Funding Availability (NOFA) for the Public Housing Neighborhood Networks Program From Fiscal Year 2003 Funding

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability from Fiscal Year 2003 Funds for the Public Housing Neighborhood Networks Program.

SUMMARY: On April 25, 2003, HUD published a notice of funding availability (NOFA) announcing the availability of Fiscal Year (FY) 2003 funds for the Public Housing Neighborhood Networks (NN) program. This notice announces the availability of $947,098 in FY2003 NN funds. These funds were erroneously awarded to ineligible nonprofit organizations. Subsequently, the awards were cancelled.

DATES: *Application Due Date:* March 21, 2005.

ADDRESSES: Applicants should mail their applications to Dina Lehmann-Kim, Office of Public Housing and Voucher Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000. Applicants should consult the April 25, 2003, NOFA for additional mailing and receipt procedures.

FOR FURTHER INFORMATION CONTACT: Dina Lehmann-Kim at the above address; telephone (202) 708–4932 ext. 3410 (this is not a toll-free number). Individuals with speech or hearing impairments may access this telephone number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On April 25, 2003 (68 FR 21509), HUD published a NOFA announcing the availability of $14,902,500 in FY2003 funds for the NN Program. Among the recipients of this funding were four nonprofit organizations. HUD later determined that these nonprofit organizations were ineligible to receive funding under the 2003 NOFA. Under section 9(d)(1)(E) of the United States Housing Act of 1937 (42 U.S.C. 1437g(d)(1)(E)), the provision of Capital Funds for the Neighborhood Networks program is limited to Public Housing Authorities (PHAs). HUD thus cancelled the awards to the ineligible nonprofit organizations.

II. This Notice

This notice announces the availability of $947,098 in FY2003 funds for the Public Housing Neighborhood Networks program. These funds will be awarded under the same criteria published in the SuperNOFA on April 25, 2003 (68 FR 21002). Applicants should refer to the General Section of the SuperNOFA as well as to the Program Section in order to ensure that all application requirements are met. The General Section, Program Section, and required forms of the 2003 SuperNOFA may be downloaded from the following Web site: *http://www.hud.gov/library/bookshelf18/supernofa/nofa03/fundsavail.cfm.* Applicants also should review the technical correction made to the 2003 NN NOFA. The technical correction also is available from the above Web site.

This announcement also provides the due date for submitting applications for funding available under this notice.

The competition for the funding under this NOFA will be limited to the following four PHAs: (1) The District of Columbia Housing Authority (DCHA), (2) the Housing Authority of the City of Milwaukee (HACM), (3) Memphis Housing Authority (MHA), and (4) the Schenectady Municipal Housing Authority (SMHA). These are the four PHAs whose residents would have been served by the four ineligible nonprofit organizations. Making these PHAs eligible to apply for this funding will help harmonize the error made by HUD and avoid compromising the benefits that otherwise would have been received by the residents.

The amounts to be awarded under this NOFA to the four PHAs are shown in the table below.

SUMMARY TABLE

Grant program	Total funding	Eligible applicants	Maximum grant amount
Neighborhood Networks	$947,098	DCHA HACM MHA SMHA	DCHA—Up to $299,998 HACM—Up to $100,000 Memphis HA—Up to $293,825 SMHA—Up to $253,275

Dated: January 3, 2005.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. E5–168 Filed 1–18–05; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4889–N–04]

Statutorily Mandated Designation of Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986—Technical Correction

AGENCY: Office of the Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: On November 30, 2004, HUD published a notice that designated ''Difficult Development Areas'' for purposes of the Low-Income Housing Tax Credit (LIHTC) under Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42). HUD makes new Difficult Development Area designations annually. This notice published in today's **Federal Register** advises of two corrections to the November 30, 2004, publication.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions: Alastair McFarlane, Senior Economist, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–6000, telephone (202) 708–0426, e-mail *Alastair_McFarlane@hud.gov*. For specific legal questions pertaining to Section 42: Branch 5, Office of the Associate Chief Counsel, Passthroughs & Special Industries, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone (202) 622–3040, fax (202) 622–4524. For questions about the ''HUB Zones'' program: Michael P. McHale, Assistant Administrator for Procurement Policy, Office of Government Contracting, Suite 8800, Small Business Administration, 409 Third Street, SW., Washington, DC 20416, telephone (202) 205–8885, fax (202) 205–7167, e-mail *hubzone@sba.gov*. A text telephone is available for persons with hearing or speech impairments at (202) 708–9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at (800) 245–2691 for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice and additional information about Difficult Development Areas and Qualified Census Tracts, including the November 30, 2004, publication are available electronically on the Internet (World Wide Web) at *http://www.huduser.org/datasets/qct.html*.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 2004 (69 FR 69730), HUD published a notice in the **Federal Register** at 69 FR 69730 that designated Difficult Development Areas for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. The designations of Difficult Development Areas in the November 30, 2004, notice are based on final fiscal year 2004 Fair Market Rents (FMRs), 2004 very-low income limits (VLILs), and 2000 Census population counts as explained in the November 30, 2004, notice. The November 30, 2004, notice advised that designations of Qualified Census Tracts under Section 42 of the Internal Revenue Code published December 12, 2002 (67 FR 76451), as supplemented on December 19, 2003 (68 FR 70982), remain in effect.

This Notice

HUD identified two technical errors in the November 30, 2004, publication, in FR Doc 04–26328, which are corrected by this notice published in today's edition of the **Federal Register**.

First, the following language was inadvertently included in the ''Explanation of HUD Designation Methodology section,'' under the heading C. Exceptions to OMB Definitions of MSAs/PMSAs and Other Geographic Matters (See 69 FR 69732 at end of first column continuing to second column.):

> Certain nonmetropolitan county equivalent areas in Alaska for which FMRs and VLILs are calculated and thus form the basis of Difficult Development Area determinations are no longer recognized as geographic entities by the Bureau of the Census. Therefore, no 2000 Census population counts are produced for these areas. HUD estimated the 2000 population of these areas as follows:
>
> 1. The 2000 Population of Denali Borough (1,893) was allocated entirely to the Yukon-Koyukuk Census Area. The part of Denali Borough created from the Southeast Fairbanks Census Area was deemed uninhabited after examination of Census Block data for, and maps of, the area of Denali Borough formerly in the Southeast Fairbanks Census Area.
>
> 2. The population of Yakutat City and Borough (808) was allocated to the former Skagway-Yakutat-Angoon Census Area (680) and the Valdez-Cordova Census Area (128). The populations of Yakutat City and Borough Census Blocks located east of 141° west longitude were allocated to the Skagway-Yakutat-Angoon Census Area. The populations of Yakutat City and Borough Census Blocks located west of 141° west longitude were allocated to the Valdez-Cordova Census Area.

The above language was in error because in fact, HUD computed and published FY2004 Fair Market Rents and Very-Low Income Limits for all of the nonmetropolitan county equivalent areas in Alaska as demarcated in the 2000 Census. HUD used the FY2004 Fair Market Rents and Very-Low Income Limits to designate the 2005 Difficult Development Areas. Therefore, HUD did not use the above population allocation procedure in the designation of the 2005 Difficult Development Areas.

Second, in the table enumerating the 2005 Metropolitan Difficult Development Areas, the name of one of the towns in the Massachusetts part of the Boston, MA-NH PMSA did not appear due to a formatting error. The list of cities and towns in the Massachusetts part of the Boston, MA-NH PMSA

should also include ''Manchester-by-the-Sea town.'' (See 69 FR 69735.)

Dated: January 7, 2005.

Dennis C. Shea,

Assistant Secretary for Policy Development and Research.

[FR Doc. E5–170 Filed 1–18–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4743–N–07]

Notice of Planned Closing of Memphis, TN Post-of-Duty Station

AGENCY: Office of Inspector General, (HUD).

ACTION: Notice of planned closing of the Memphis, Tennessee post-of-duty station.

SUMMARY: This notice advises the public that HUD Office of Inspector General (OIG) plans to close its Memphis, Tennessee post-of-duty station, and also provides a cost-benefit analysis of the impact of this closure.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Counsel to the Inspector General, Room 8260, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–4500, 202–708–1613 (this is not a toll free number). A telecommunications device for hearing- and speech—impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services).

SUPPLEMENTARY INFORMATION: The Memphis, Tennessee post-of-duty station was opened in the middle 1980s to address fraud throughout the State of Tennessee. Later, the Nashville, Tennessee office—which is centrally located, and, thus, better situated geographically to address fraud statewide—was opened. In September 2004, one of the two agents assigned to Memphis was promoted and transferred to Texas. HUD/OIG has determined that greater efficiency and cost-savings can be achieved by now consolidating staff and resources in the centrally located Nashville office.

Section 7(p) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(p)) provides that a plan for field reorganization, which may involve the closing of any field or regional office, of the Department of Housing and Urban Development may not take effect until 90 days after a cost-benefit analysis of the effect of the plan on the office in question is published in the **Federal Register**. The required cost-benefit analysis should include: (1) An estimate of cost savings anticipated; (2) an estimate of the additional cost which will result from the reorganization; (3) a discussion of the impact on the local economy; and (4) an estimate of the effect of the reorganization on the availability, accessibility, and quality of services provided for recipients of those services.

Legislative history pertaining to section 7(p) indicates that not all reorganizations are subject to the requirements of section 7(p). Congress stated that ''[t]his amendment is not intended to [apply] to or restrict the internal operations or organization of the Department (such as the establishment of new or combination of existing organization units within a field office, the duty stationing of employees in various locations to provide on-site service, or the establishment or closing, based on workload, of small, informal offices such as valuation stations).'' (See House Conference Report No. 95–1792, October 14, 1978 at 58.) Through this notice, HUD/OIG advises the public of the closing of the Memphis, Tennessee duty station and provides the cost benefit analysis of the impact of the closure.

Impact Of The Closure Of The Memphis, Tennessee, Post-Of-Duty Station: HUD/OIG considered the costs and benefits of closing the Memphis, Tennessee post-of-duty station, and is publishing its cost-benefit analysis with this notice. In summary, HUD/OIG has determined that the closure will result in a cost savings, and, as a result of the size and limited function of the office, will cause no appreciable impact on the provision of authorized investigative services/activities in the area.

Cost-Benefit Analysis

A. *Cost Savings:* The Memphis, Tennessee post-of-duty station currently costs approximately $2,645.00 per month for space rental. Additional associated overhead expenses (*e.g.*, telephone service) are incurred to operate the post-of-duty station. Thus, closing the office will result in annual savings of at least $32,000. In addition, by closing the office HUD/OIG will not be required to incur additional costs associated with current plans to install high-speed computer access lines to and on the premises.

B. *Additional Costs:* Relocation costs associated with the transfer of one special agent to Nashville from Memphis, Tennessee is estimated to total no more than $25,000. This cost will be offset by savings in the first year.

C. *Impact on Local Economy:* No appreciable impact on the local economy is anticipated. The post-of-duty station is co-located with office space leased by other Federal agencies, and it is anticipated that the space can easily be re-leased to other tenants.

D. *Effect on Availability, Accessibility and Quality of Services Provided to Recipients of Those Services:* The availability, accessibility and quality of services provided to complainants will not be adversely impacted. Special agents assigned to other HUD/OIG offices—chiefly Nashville—can cost-effectively address fraud allegations in Tennessee generally and Memphis specifically.

For the reasons stated in this notice, HUD/OIG intends to proceed to close its Memphis, Tennessee post-of-duty station at the expiration of the 90-day period from the date of publication of this notice.

Dated: January 6, 2005.

Kenneth M. Donohue, Sr.,

Inspector General.

[FR Doc. E5–169 Filed 1–18–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Osage Tribe—Sale and Consumption of Alcoholic Beverages

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Osage Tribe's Liquor Control Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Osage Indian Reservation and Osage Indian Country. The land is located on trust land and this Ordinance allows for the possession and sale of alcoholic beverages within the Osage Tribe's Reservation and Osage Indian Country and will increase the ability of the tribal government to control the tribe's liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

EFFECTIVE DATE: This Act is effective on January 19, 2005.

FOR FURTHER INFORMATION CONTACT: Karen Ketcher, Regional Tribal Government Officer, Bureau of Indian Affairs, Eastern Oklahoma Regional Office, PO Box 8002, Muskogee, OK 74402–8002, Phone 918–781–4685, Fax 918–781–4649; or Ralph Gonzales, Office of Tribal Services, 1951

Constitution Avenue, NW., MS–320–SIB, Washington, DC 20240; Telephone (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Osage Tribal Council adopted its Liquor Control Ordinance by Resolution No. 31–846 on August 4, 2004. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within the Osage Indian Reservation and Osage Indian Country.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs.

I certify that this Liquor Ordinance, of the Osage Tribe, was duly adopted by the Tribal Council on August 4, 2004.

Dated: January 11, 2005.

David W. Anderson,

Assistant Secretary—Indian Affairs.

The Osage Tribe's Liquor Ordinance reads as follows:

Osage Tribe Liquor Control Ordinance

Introduction

Section 1. Citation

This Act may be cited as the ''Osage Tribe Liquor Control Ordinance.''

Section 2. Purpose

(a) It is necessary to strengthen the government of the Osage Tribe of Indians by exercising the specific grant of authority contained in Act of June 28, 1906, 34 Stat. 539, as amended, and interpreted by subsequent judicial decisions, to levy and collect taxes and fees, to license and regulate certain conduct within the jurisdiction of the Osage Tribe, to provide financing for the current expenses of the tribal government, and to provide financing for the expansion of tribal government operations and services in order for the Osage Tribe to efficiently and effectively exercise its confirmed inherent sovereignty and governmental responsibilities within the jurisdiction of the Osage Tribe.

(b) The purpose of this Ordinance is to regulate the sale, possession and use of alcoholic liquor on the Osage Indian Reservation and other lands subject to Tribal jurisdiction, and to provide simple, fair, straightforward and efficient procedures for the levy and collection of certain taxes and fees and the licensing and regulation of certain conduct.

(c) The enactment of a tribal ordinance governing liquor possession and sale on the Osage Indian Reservation and Osage Indian Country will increase the ability of the tribal government to control the sale, distribution and possession of liquor and will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

Section 3. Declaration of Public Policy

(a) The introduction, possession, and sale of liquor in the Osage Indian Reservation and Osage Indian Country are a matter of special concern to the Osage Tribe.

(b) Federal law forbids the introduction, possession and sale of liquor in Indian Country (18 U.S.C. 1154 and other statutes), except when the same is in conformity both with the laws of the State and Tribe (18 U.S.C. 1161). As such, compliance with this ordinance shall be in addition to, and not a substitute for, compliance with the laws of the State of Oklahoma or other state where the Osage Indian Reservation and/or Osage Indian Country is located.

(c) The Osage Tribal Council finds that a complete ban on liquor within the Osage Indian Reservation and Osage Indian Country is ineffective and unrealistic. However, it recognizes that a need still exists for strict regulation and control over liquor transactions within the Osage Indian Reservation and Osage Indian Country because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution, and consumption of liquor. The Osage Tribal Council finds that tribal control and regulation of liquor is necessary to achieve maximum economic benefit to the Tribe, to protect the health and welfare of tribal members, and to address specific concerns relating to alcohol use on the Osage Indian Reservation and Osage Indian Country.

(d) It is in the best interests of the Osage Tribe to enact a tribal ordinance governing liquor sales on the Osage Indian Reservation and Osage Indian Country, which provides for purchase, distribution, and sale of liquor only on tribal lands within the exterior boundaries of the Osage Indian Reservation and in Osage Indian Country wherever located. Further, the Tribe has determined that said purchase, distribution, and sale shall take place only at a tribally-owned gaming facility complex or at such other location duly licensed by the Osage Tribe.

Section 4. Jurisdiction

The Osage Tribal Council, as the sole governing body of the Osage Tribe of Indians, hereby affirmatively declares, asserts, and extends the jurisdiction of the Osage Tribe over the Osage Indian Reservation and all Indian country, as defined in 18 U.S.C. 1151, within the exterior boundaries of the Osage Indian Reservation, as described in the Act of June 5, 1872, 17 Stat. 220, except that portion purchased by the Kaws, and all Osage Indian Country wherever located.

Section 5. Scope of Law; Consent

The scope of this ordinance shall extend to all persons or legal entities receiving licenses hereunder, or doing business within the Tribal jurisdiction, or having significant contacts within the Tribal jurisdiction, or residing within the Tribal jurisdiction, or entering or coming within the Tribal jurisdiction, or consuming, possessing, manufacturing or distributing alcohol within the Tribal jurisdiction. All such persons or entities shall be deemed to have consented to the jurisdiction of the Osage Tribe of Indians and to the provisions of this Act, the operation thereof, and to the jurisdiction and authority of the Osage Tribe of Indians, and shall, by virtue of such actions, be deemed to have waived all jurisdictional defenses to the jurisdiction and venue of the Osage Tribe of Indians and the Osage Tribal Court, notwithstanding that such persons or legal entities may be of non-Indian descent or character.

Section 6. Severability

If any provision or application of this ordinance is determined by review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this ordinance or to render such provisions inapplicable to other persons or circumstances. Any and all prior liquor control enactments of the Tribal Council which are inconsistent with the provisions of this ordinance are hereby rescinded and repealed.

Section 7. Amendment and Construction

This ordinance may only be amended by a vote of the Osage Tribal Council, the governing body of the Osage Tribe. Nothing in this ordinance shall be construed to diminish or impair in any way the rights or sovereign powers of the Osage Tribe or its tribal government.

Section 8. Sovereign Immunity

The Osage Tribal Council, as the sole governing body of the Osage Tribe of

Indians, expressly and generally reserves for itself, the Osage Tribe of Indians, the Osage Nation Tax Commission and individual members and employees of the Osage Tribal Council and the Osage Nation Tax Commission and individual employees of the Osage Tribal Government, when acting within the scope of their official duties, all rights of sovereign immunity against lawsuits of every kind and nature, less and except the right to appeal decisions of the Tax Commission as provided by Section 106 of the Osage Tribe Revenue and Taxation Act of 1997, as amended.

The sovereign immunity of the Tribe and any elected Tribal council member or tribal official and the Osage Nation Tax Commission with respect to any action taken in an official capacity under this ordinance, or in the exercise of the official powers of any such office, in any action filed in any court with respect thereto, may only be waived by a formal resolution of the Tribal Council. All waivers shall be unequivocally expressed in such resolution. No waiver of the Tribe's sovereign immunity from suit may be implied from any action or document. Waivers of sovereign immunity in a Tribal Council resolution shall not be general but shall be specific and limited as to duration, grantee, action, and property or funds, if any, of the Tribe or any agency of the tribe subject thereto. No express waiver of sovereign immunity by resolution of the Tribal Council shall be deemed a consent to the levy of any judgment, lien or attachment upon property of the Tribe or any agency of the Tribe other than property specifically pledged or assigned therein. Any consent to arbitration agreed to by the Tribe in any contract shall not constitute a waiver of sovereign immunity unless it conforms to this section, and the Tribe hereby expressly retains its sovereign immunity from suit.

Section 9. Effective Date

This ordinance shall be effective on such date as the Secretary of the Interior certifies this ordinance and publishes the same in the **Federal Register**.

Chapter One—Liquor Control

Section 101. Definitions

As used in this Ordinance, the following words shall have the following meaning unless the context clearly requires otherwise:

(a) ''*Alcohol*'' means that substance known as ethyl alcohol, hydrated oxide of ethyl, alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever source or by whatever process produced.

(b) ''*Alcoholic Beverage*'' is synonymous with the term ''liquor'' as defined in subsection (h) of this section.

(c) ''*Bar*'' means any establishment with special space and accommodations for the sale of liquor by the glass and for consumption on the premises as herein defined.

(d) ''*Beer*'' means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and containing the percent of alcohol by volume subject to regulation as an intoxicating beverage in the state where the beverage is located. Beer includes, among other things, beer, ale, stout, lager beer, porter and other malt or brewed liquors, but does not include sake, known as Japanese rice wine.

(e) ''*Consume*'' means the putting of liquor to any use, whether by drinking or otherwise.

(f) ''*Distiller*'' means a person engaged in the business of distilling spirits.

(g) ''*Distribute*'' means to deliver or sell liquor products prior to retail sale.

(h) ''*Liquor*'' includes the four varieties of liquor (alcohol, spirits, wine and beer) and all fermented, spirituous, vinous, malt liquor, or combinations thereof, a mixed liquor a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, rum, gin, aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances which contains more than one-half of 1 percent of alcohol.

(i) ''*Liquor Store*'' means any store at which liquor is sold and, for the purpose of this ordinance, including stores only a portion of which are devoted to sale of liquor or beer.

(j) ''*Malt Liquor*'' means beer, strong beer, ale, stout and porter.

(k) ''*Manufacturer*'' means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(l) ''*Osage Indian Reservation and Osage Indian Country*'' means all lands constituting Indian Country as defined by 18 U.S.C. 1151 that are subject to the jurisdiction of the Osage Tribe.

(m) ''*Osage Nation Tax Commission*'' means the authority of the Osage Tribe which is charged with the duty to enforce this Liquor Control Ordinance in addition to their other duties.

(n) ''*Osage Tribal Council*'' means the governing body of the Osage Tribe.

(o) ''*Osage Tribe*'' means the federally recognized Osage Tribe and any of its successors or assigns.

(p) ''*Package*'' means any container or receptacle used for holding liquor.

(q) ''*Person*'' means an individual, partnership, association or corporation.

(r) ''*Public Place*'' includes state, county, tribal, federal highways, or roads; buildings and grounds used for school purposes; streets and alleys of communities; rodeo grounds, tribal ceremonial grounds, community buildings, public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; publicly-owned bathing beaches, parks or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access and which are generally used by the public.

(s) ''*Sale and Sell*'' include exchange, barter, and traffic, and also include the selling or supplying or distributing by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

(t) ''*Spirits*'' mean any beverage which contains alcohol obtained by distillation, and includes those products known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and fortified wines and similar compounds, including wines exceeding 17 percent of alcohol by weight.

(u) ''*Tavern*'' means any retail sales business selling beer, liquor or wine not in sealed packages, that is ''by the drink,'' within the boundaries of the Osage Indian Reservation or Osage Indian Country.

(v) ''*Tribal Court*'' means the Osage Tribal Court.

(w) ''*Wine*'' means any alcohol beverage obtained by fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, to which any saccharine substances may have been added before, during or after fermentation, and containing more than one-half of one percent alcohol by volume and not more than 17 percent of alcohol by weight, including sweet wines fortified with wine spirits such as

port, sherry, muscatel and angelica, and including vermouth and sake, known as Japanese rice wine.

Section 102. Enforcement

(a) *Powers and Duties.* In furtherance of this ordinance, the Osage Nation Tax Commission shall have the following powers and duties:

(1) To publish and enforce rules and regulations governing licensing and the sale, manufacture, distribution, and possession of alcoholic beverages on the Osage Indian Reservation and Osage Indian Country. Such rules and regulations shall not be inconsistent with the rules and regulations of the State of Oklahoma and shall be approved by the Osage Tribal Council prior to taking effect;

(2) To employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Osage Nation Tax Commission to perform its function. Such employees shall be tribal employees;

(3) To bring suit in the Tribal Court or other appropriate Court to enforce this ordinance as necessary;

(4) To issue licenses permitting the sale of liquor on the Osage Indian Reservation and other lands subject to Tribal jurisdiction;

(5) To determine and seek damages for violation of the ordinance;

(6) To make such reports as may be required by the Osage Tribal Council;

(7) Keep accurate records, books and accounts; and

(8) To exercise such other powers as is necessary and appropriate to fulfill the purposes of this ordinance.

(b) *Limitation on Powers.* In the exercise of its powers and duties under this ordinance, the Osage Nation Tax Commission shall not:

(1) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee; or

(2) Waive the immunity of the Osage Tribe from suit without the express written consent and resolution of the Tribal Council in accordance with Section 8.

(c) *Inspection Rights.* The premises on which liquor is sold or distributed shall be open for inspection by the Osage Nation Tax Commission at all reasonable times for the purposes of ascertaining whether the rules and regulations of the Osage Nation Tax Commission and this ordinance are being complied with.

Section 103. Licensing

(a) *Application.* Any person or entity applying for a license to sell or serve liquor in the jurisdiction of the Osage Nation shall complete an application provided by the Osage Nation Tax Commission and pay such application fee as may be set from time to time by the Osage Nation Tax Commission.

(b) *Licensing requirements.* No license shall be issued under this ordinance except upon a sworn application filed with the Osage Nation Tax Commission containing a full and complete application showing the following:

(1) Satisfactory proof that the applicant is duly licensed by the State of Oklahoma to sell alcoholic beverages;

(2) The description and location of the premises in which the alcoholic beverages are to be sold and proof that the applicant is entitled to use such premises for such purposes for the duration of the time period of the license;

(3) Agreement by the applicant to accept and abide by all conditions of the license as established by the Osage Nation Tax Commission; and

(4) Payment of a fee established by the Osage Nation Tax Commission;

(c) *Period of license.* Each license may be issued for a period not to exceed one year from the date of issuance.

(d) *Renewal of license.* A licensee may renew its license if the licensee has complied in full with this ordinance.

(e) *Revocation of license.* The Osage Nation Tax Commission may revoke a license for reasonable cause upon notice and hearing at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

(f) *Non-transferability of license.* Licenses issued by the Osage Nation Tax Commission shall not be transferable and may only be utilized by the person or entity to which it was issued.

Section 104. Sales and Purchases of Liquor

The introduction and possession of liquor consistent with this ordinance shall be lawful within Indian Country under the jurisdiction of the Osage Tribe and within the exterior boundaries of the Osage Indian Reservation only when such activities are in conformity with this Ordinance. All other purchases and sales of liquor within the Osage Indian Reservation and Osage Indian Country shall be prohibited.

(a) *Sales by Tribe or Licensees.* Only the Osage Tribe may make retail sales of liquor in gaming facilities that are owned by the Tribe and the patrons of the Tribe's gaming facilities may consume said liquor on the gaming facility complex. Any other licensed retailer may make retail sales of liquor on their licensed premises, but patrons of the licensee may consume said liquor only on those licensed premises, or where otherwise allowed by this ordinance.

(b) *Sales for Cash.* All liquor sales on the Osage Indian Reservation and Osage Indian Country shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that the provision does not prevent the payment for purchases with use of credit cards such as Visa, MasterCard, American Express, etc.

(c) *Sale for Personal Consumption.* All sales shall be for the personal use and consumption of the purchaser. Any person who purchases an alcoholic beverage on the Osage Indian Reservation and Osage Indian Country and sells it, without a license, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subjected to paying damages to the Osage Tribe as set forth herein.

Section 105. Taxes

(a) *Tax Levied.* There is hereby levied a liquor tax of five percent (5%) on the sale of each and every alcoholic beverage sold within the Osage Indian Reservation and Osage Indian Country. The incidence of said tax shall be on the consumer. The liquor tax shall be collected by the gaming facility or licensee and paid over to the Osage Nation Tax Commission as provided herein. No municipality, city, town or county, nor the state shall have the power to impose an excise or any other tax upon liquor as defined in this Ordinance, or to govern or license the sale or distribution thereof in any manner within the Osage Indian Reservation and Osage Indian Country, unless in conformance with federal, Oklahoma, and Osage Tribal law.

(b) *Taxes Due.* All taxes for the sale of liquor and alcoholic beverages on the Osage Indian Reservation and Osage Indian Country are due on the 15th day of the month following the end of the calendar quarter for which the taxes are due.

(c) *Delinquent Taxes.* Past due taxes shall accrue interest at two percent (2%) per month.

(d) *Reports.* Along with payment of the taxes imposed herein, the taxpayer shall submit a quarterly accounting of all income from the sale or distribution of liquor, as well as for the taxes collected, to the Osage Nation Tax Commission.

(e) *Compliance with Tribal Tax laws.* Except as otherwise set forth in this Ordinance, the collection and enforcement of liquor taxes shall be

conducted by the Osage Nation Tax Commission in accordance with the Osage Tribe Revenue and Taxation Act of 1997, as amended.

Section 106. Rules, Regulations and Enforcement

(a) In any proceeding under this ordinance, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this ordinance.

(b) Any person who buys liquor within the boundaries of the Osage Indian Reservation and Osage Indian Country contrary to this ordinance shall be guilty of a violation of this ordinance.

(c) Any person who sells or offers for sale any liquor within the boundaries of the Osage Indian Reservation and Osage Indian Country contrary to this ordinance shall be guilty of a violation of this ordinance.

(d) Any person who shall operate a liquor product outlet or tavern within the boundaries of the Osage Indian Reservation and Osage Indian Country without first obtaining a current and valid Tribal license under this Ordinance shall be considered to be in violation of all federal Indian liquor laws and regulations as well as in violation of this Ordinance.

(e) Any person who keeps or possesses liquor upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to sell or distribute it contrary to the provisions of this title, shall be guilty of a violation of this ordinance.

(f) Any person who knowingly sells liquor to a person under the influence of liquor shall be guilty of a violation of this ordinance. No person shall sell liquor to any buyer when, from the physical appearance of the buyer at the time of the sale, it could be reasonably believed or understood that the buyer was intoxicated.

(g) Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor in any public conveyance, shall be guilty of an offense. Any person who shall drink liquor in a public conveyance shall be guilty of a violation of this ordinance.

(h) No person under the age of 21 years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the age of 21 to consume liquor on his premises or any premises under his control except in those situations set out in this section. Any person who shall sell or provide any liquor to any person under the age of 21 years shall be guilty of a violation of this ordinance for each sale or drink provided. Any person violating this section shall be guilty of a separate violation of this ordinance for each and every drink so consumed.

(i) Any person who transfers in any manner an identification of age to a person under the age of 21 years for the purpose of permitting such person to obtain liquor shall be guilty of an offense, provided that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this ordinance.

(j) Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of violating this ordinance.

(k) When requested by the provider of liquor, any person shall be required to present official documentation of the bearer's age, signature and photograph. Official documentation includes any one or more of the following:

(1) Driver's license or identification card issued by any state department of motor vehicles;

(2) Tribal enrollment card, Tribal identification card or Certificate of Degree of Indian Blood (CDIB) card showing date of birth and photograph;

(3) United States Active Duty Military; or

(4) Passport.

(l) Liquor which is possessed, including for sale, contrary to the terms of this ordinance is declared to be contraband. Any tribal agent, employee or officer who is authorized by the Tribal Council or Osage Nation Tax Commission, including law enforcement officers under a cross-deputization agreement, to enforce this section shall seize all contraband and preserve it in accordance with the provisions established for the reservation of impounded property. Upon being found in violation of this ordinance, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Osage Tribe.

(m) Alcoholic liquor shall not be given as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind.

(n) For the purpose of obtaining information concerning any matter related to the administration or enforcement of this ordinance, the Tribe or any person appointed by it in writing for that purpose, may inspect the books and records of any licensee doing business on the Osage Indian Reservation and Osage Indian Country. Every person who neglects or refuses to produce or submit to inspection any records referred to in this section when requested to do so shall be guilty of a violation of this ordinance.

(o) Any person guilty of a violation of this ordinance, except non-payment of liquor taxes due, shall be liable to pay to the Osage Tribe the amount of up to $5,000 per violation as civil damages to defray the Tribe's cost of enforcement of this ordinance, and may be subject to criminal prosecution under tribal law, or under state law if non-Indian. The Tribal Court shall not issue any order or injunction closing any business for a violation of this ordinance without granting to the defendant the opportunity to have a full evidentiary and adversary hearing before the Tribal Court.

(p) All persons found to have violated this ordinance, except for non-payment of liquor taxes, shall be reported to the Federal Bureau of Investigation and the United States Attorney for the purpose of requesting a federal criminal prosecution of such persons or entities for violation of Federal Indian liquor laws.

Section 107. Exemptions

(a) Nothing in this Ordinance shall apply to or prevent the sale of liquor by any person to the Tribe.

(b) Nothing in this Ordinance shall apply to alcoholic beverages used in a bona fide religious ceremony.

(c) Nothing in this Ordinance shall apply to or prevent sale, purchase or consumption of:

(1) Any pharmaceutical preparation containing liquor which is prepared by a druggist according to a formula of the pharmacopoeia of the United States, or the dispensatory of the United States; or

(2) Away proprietary or patent medicine; or

(3) Wood alcohol or denatured alcohol, except in the case or the sale, purchase, or consumption of wood alcohol or denatured alcohol for beverage purposes, either alone or combined with any other liquid or substance.

(4) Cooking Wine used in cooking.

(d) Nothing in this Ordinance shall apply to wine or beer manufactured in any home for consumption therein, and not for sale.

(e) Nothing in this Ordinance shall apply to alcoholic beverages possessed by an individual in his/her home for private consumption therein.

Section 108. Abatement

(a) Any room, house, building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all property kept in and used in maintaining such place, is hereby declared to be a nuisance.

(b) The Osage Nation Tax Commission shall institute and maintain an action in the Tribal Court in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this article. In addition to other remedies at tribal law, the Tribal Court may also order the room, house, building, vehicle, structure, or place closed for a period of 1 year or until the owner, lessee, tenant, or occupant thereof shall give bond of a sufficient sum from $1,000 to $15,000, depending upon the severity of past offenses, the risk of offenses in the future and other appropriate criteria, payable to the Tribe and conditions that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other violation of this ordinance or other tribal liquor laws. If any conditions of the bond are violated, the bond may be applied to satisfy any amount due to the Tribe under this ordinance.

(c) In all cases where any person has been found in violation of this ordinance relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a nuisance any real estate or other property involved in the violation of the ordinance and violation of this ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Section 109. Liability Insurance

Prior to a liquor license being granted to any applicant, and prior to renewal of any liquor license, the applicant must provide proof of liability insurance to the Osage Nation Tax Commission.

Section 110. Revenue

Revenue received by the Tribe under this ordinance, from whatever source, shall be expended for administrative costs incurred in the enforcement of this ordinance. Excess funds shall be subject to appropriation by the Tribal Council for essential governmental and social services, including the use of revenues to combat alcohol abuse and its debilitating effects among individuals and family members with the Osage Tribe.

Certification

I hereby certify that the above and foregoing Liquor Control Ordinance is the Ordinance adopted by the Osage Tribal Council on the 4th day of August 2004, pursuant to Resolution No. 3846.

Jim Gray,

Principal Chief.

Attested by:

Jewell Purcell,

Secretary.

[FR Doc. 05–995 Filed 1–18–05; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–340–1210–PC]

South Cow Mountain Wet Weather Temporary Closure; Temporary Motor Vehicle Use Closure of the South Cow Mountain Recreation Area Due to Wet Weather/Snow Conditions, Mendocino and Lake Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In order to facilitate temporary operations and protect resources in the event of severe seasonal storms and/or natural disasters, the Ukiah Field Office is hereby serving notice that it will be adopting a temporary closure policy to be enacted on an as-needed basis when basic criteria are met. The policy will be in place for up to one year, or upon completion of the Ukiah RMP. The closure will be invoked or lifted through notices in news media outlets, information hot lines and on-the-ground postings. The lands covered by this temporary closure include all public lands administered by the Ukiah Field Office within the South Cow Mountain Recreation Area. Public notices listed on information lines will specify which public lands will be temporarily closed, and will reflect local conditions. One of the following criteria shall be met to temporarily close the area:

(1) State, County or Federal road access to the area is closed or restricted to residents and emergency personnel;

(2) BLM or emergency response personnel cannot access and/or perform their duties in a given location;

(3) Roads or trails are saturated with moisture to the point where vehicle traffic causes ruts or bogs leading to increased erosion. Moisture criteria are detailed in the **SUPPLEMENTARY INFORMATION** below. The above temporary closure is intended to allow the BLM flexibility in implementing closures while utilizing the most time-effective method of notifying the public. This will also facilitate management to minimize threats to public health and safety, as well as the potential for resource damage. Any time the closure policy is enacted, the following persons will be exempt:

(1) Federal, State, or local law enforcement officers, while engaged in the execution of their official duties.

(2) BLM personnel or their representatives while engaged in execution of their official duties.

(3) Any member of an organized rescue, fire-fighting force, and/or emergency medical services organization while in the performance and execution of an official duty.

(4) Any member of a Federal, State, or local public works department while in the performance of an official duty.

(5) Any person in receipt of a written authorization of exemption obtained from the Ukiah Field Office.

(6) Local landowners, persons with valid existing rights or lease operations, or representatives thereof, who have a responsibility or need to access their property or to continue their operations on public land.

(7) Human use and associated foot traffic into the area during the closure period are exempt from this closure restriction.

EFFECTIVE DATE: This policy will become effective October 1, 2004, and shall remain in effect for up to one year, or upon completion of the Ukiah RMP.

FOR FURTHER INFORMATION CONTACT: Rich Burns, field manager, BLM Ukiah Field Office, 2550 North State St., Ukiah, CA 95482. Telephone: (707) 468–4000.

SUPPLEMENTARY INFORMATION: These closures and restrictions are under the authority of 43 CFR 8364.1. Persons violating this closure shall be subject to the penalties provided in 43 CFR 8360.0–7, including a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Parties exempt from the closure action shall be responsible for mitigating any resource damage caused by entering the closed area. Waivers can be granted for emergency circumstances; however, in the event an emergency is caused by a negligent action, the responsible party would then be responsible for the mitigation.

Criteria for weather-related emergency closures at the South Cow Mountain Off-Highway-Vehicle Recreation area are as follows: No action would be taken until the annual total precipitation exceeds 6 inches. The rain year would be the same as that used by the National Weather Service and rainfall data would be acquired from the California Water Resources Board, nearest available rain gauge. Once 6 inches of precipitation has been exceeded, the following would apply: Additional rainfall exceeding ½ inch within a 24 hour period, or 1 inch within a 72 hour period will result in a temporary closure to all motorized vehicles. Once the closure has been implemented, a 3-day drying period will begin after no measurable precipitation is recorded. Once the area has been closed, a field inspection will be completed prior to reopening, and daily thereafter to determine suitability of road and trail conditions. When recorded field observations show that road and trail surfaces have not dried sufficiently to allow traffic without damage to the surface, the area shall remain closed. Closure criteria may be amended or refined as results of area closures are evaluated. Specific criteria may be developed for other areas as needed.

Dated: November 3, 2005.

J. Anthony Danna,

Deputy State Director, Natural Resources, California State Office.

[FR Doc. 05–1018 Filed 1–18–05; 8:45 am]

BILLING CODE 4320–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Emergency Closure of Public Lands; Natrona County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of emergency closure.

SUMMARY: Notice is hereby given that certain lands are temporarily closed to motor vehicle use, discharge of firearms, and livestock grazing.

The closed area is locally known as the Poison Spider Shooting Area. The public lands affected by this closure are lands administered by the BLM and described as: part of the North ½ of the Northwest ¼ and part of the North ½ of the Southwest ¼ of Section 14 in Township 33 North, Range 82 West, Sixth Principal Meridian, containing approximately 43 acres. This tract of land is bound on the east by the west bank of the Casper Canal, on the north by the old Poison Spider Road, on the west by the common section line between Sections 14 and 15, and on the south by Poison Spider Road (Natrona County Road 201). The area will be fenced and closure signs will be posted around the perimeter. Maps of the closure area and information on the rehabilitation plans may be obtained from the Casper Field Office.

The Poison Spider Shooting Area has been subject to various uses that cumulatively present a hazard to the general public and has resulted in the destruction of public resources. Unrestricted shooting endangers persons traveling on Poison Spider Road (Natrona County Road 201), Natrona County employees working at a gravel pit to the northwest of the site, employees of the Casper-Alcova Irrigation District performing maintenance on the Casper Canal, and threatens livestock authorized to graze on the public lands.

Various items of refuse such as refrigerators and propane tanks have been dumped at the site and used as targets for firearms. This may lead to the release of toxic substances into the air and/or soil and may result in explosive situations. The shooting of illegally dumped materials poses a potentially dangerous health hazard to individuals who live and work in this area.

Uncontrolled vehicle use has resulted in the destruction of public resources, including vegetation loss, soil compaction, intensive rutting and soil erosion.

The Natrona County Road and Bridge Department has agreed to assist the BLM in cleaning up the site. Upon completion of the clean-up, fencing the perimeter and posting signs, acts prohibited by this notice will be enforced.

DATES: The closure will be effective when published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Don Whyde, Casper Field Office, 2987 Prospector Drive, Casper, Wyoming, 82604, telephone (307) 261–7600.

Discussion of the Rules: Under the authority of 43 CFR 9268.3(d)(i–iv) and 43 CFR 8364.1(a), the Bureau of land management will enforce the following rule on public lands within the closed area:

1. Motor vehicle use is prohibited in the closed area.
2. Discharging of firearms is prohibited in the closed area.
3. Livestock grazing is prohibited in the closed area.

Exemptions: Persons who are exempt from these rules include any Federal, State, or local officer or employee in the scope of their duties, members of any organized rescue or fire fighting force in performance of their duties, persons employed to conduct maintenance on the Casper Canal, and any person authorized in writing by the Bureau of Land Management, Casper Field Office.

Penalties: The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a) and 43 CFR 8360.0–7. Any person who violates this closure may be tried before a United States Magistrate Judge and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: November 30, 2004.

Jim Murkin,

Field Manager, Casper Field Office.

[FR Doc. 05–1016 Filed 1–18–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Meeting of the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session on Friday, April 1, 2005, from 8 a.m. to 5 p.m. and Saturday, April 2 from 8 a.m. to 4 p.m. The meeting will be held in the conference room in the Ramada Inn, located at 1511 East Main Street in Barstow, California.

Tentative agenda items include the following:

—Reports by Council members, the District Manager and five field office managers.
—Presentation by BLM's Ridgecrest Field Office staff regarding its Adopt-A-Cabin Program.
—Update on the West Mojave Plan.
—Status report on the Surprise Canyon administrative environmental impact statement.
—Briefing by the U.S. Fish and Wildlife Service regarding its Desert Tortoise Assessment Report and the new Desert Tortoise Recovery Office.
—Udate on the Dumont Dunes Recreation Fee Demo Program.
—Council discussion to develop grazing consultation policy/procedure for the California Desert District.

All Desert District Advisory Council meetings are open to the public. Time

for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: Doran Sanchez, BLM California Desert District Public Affairs Specialist (951) 697–5220.

Dated: January 11, 2005.

Linda Hansen,

District Manager.

[FR Doc. 05–998 Filed 1–18–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Public Meeting: Resource Advisory Council to the Boise District, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the 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) Boise District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held February 8, 2005, beginning at 9 a.m. and adjourning at 4 p.m. at the Marsing Community Center, located at 126 Bruneau Highway, Marsing, ID. Public comment periods will be held after topics on the agenda.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

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 southwestern Idaho. At this meeting, the following actions will occur/topics will be discussed:

- Election of officers;
- Subcommittee Reports:
  - Sage Grouse Habitat Management;
  - U.S. Fish and Wildlife Service ''Not Warranted'' listing decision regarding Sage-Grouse;
  - Wind Energy Draft Programmatic Environmental Impact Statement, and an overview of Wind Energy projects in Idaho;
  - Off-Highway Vehicles (OHV) and Transportation Management;
  - Update on Off-Highway Vehicle Route Designation progress in the Boise District;
  - Resource Management Plans;
  - Update on draft alternatives for the Bruneau and Snake River Birds of Prey National Conservation Area Resource Management Plans, and;
- River and Recreation Management.
- Tour of new Marsing Field Office;
- Hot Topics;
- Three Field Office Managers and District Fire Manager provide updates on current issues and planned activities in their Field Offices and the District.

Agenda items may change due to changing circumstances. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time 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. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below. Expedited publication is requested to give the public adequate notice.

Dated: January 12, 2005.

Jerry L Taylor,

Associate District Manager.

[FR Doc. 05–996 Filed 1–18–05; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–084–1430–ES]

Notice of Intent To Amend the Challis Resource Management Plan, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend the Challis Resource Management Plan, Idaho.

SUMMARY: Pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA) and the National Environmental Policy Act of 1969 (NEPA), this notice is to advise the public that the Bureau of Land Management (BLM) is proposing to amend the Challis Resource Management Plan (RMP). The amendment and associated environmental analysis would allow for the potential disposal of public land to Custer County for a solid waste disposal and transfer area near Mackay, Idaho.

DATES: The public scoping period for the proposal will commence with publication of this notice. Comments regarding this proposal must be submitted in writing to the address below within 30 days after the date of publication of this notice in the **Federal Register**.

ADDRESSES: Written comments regarding the proposed plan amendment and disposal of public land should be sent to: Attention: Realty Specialist. Challis Field Office, 801 Blue Mountain Road, Challis, Idaho 83226–9358; or they may be faxed to (208) 879–6219; or e-mailed to *Gail O'Neill@blm.gov.* Existing planning documents and information are also available for review at the Challis Field Office. Comments, including names and addresses of respondents, will be available for public review at the above address during regular business hours, Monday through Friday, 7:30–4:30 pm, except holidays, and may be published as part of this amendment. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Anonymous comments will not be considered. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Gail O'Neill, Associate Field Manager, at (208) 879–6250. To have your name added to our mailing list, contact Brenda Buckland at (208) 879–6200 or via e-mail at: *Brenda_Buckland@blm.gov.*

SUPPLEMENTARY INFORMATION: Custer County has asked the BLM to help them locate and acquire land that is suitable for a solid waste transfer site. Potential land disposal areas for this purpose are

not currently identified in the Challis RMP.

The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local and regional needs as well as national needs and concerns. This notice initiates the public scoping process to identify specific issues related to the proposed amendment and NEPA process and the appropriate level of NEPA analysis that may be required.

At least one public meeting will be held in or near Mackay, Idaho to ensure the opportunity for local community participation and input. Early participation is encouraged. In addition to the public meeting, opportunities for public participation will be available during the development of alternatives and upon publication of the BLM proposed plan amendment and Notice of Realty Action. Notification of the proposal and updates will be sent to various State and local government agencies, interest groups, the Shoshone-Bannock Tribes, permittees, and other interested publics. All public meetings will be announced through the local news media and will be posted on the BLM Web site (*http://web.id.blm.gov*) at least 15 days in advance of the meetings.

Dated: September 16, 2004.

Gail O'Neill,

Acting Challis Field Manager.

[FR Doc. 05–1017 Filed 1–18–05; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–956–05–1420–BJ]

Notice of Filing of Plats of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona, (30) thirty calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona

The plat representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, homestead entry survey no. 401 and tract 37 and 38, and metes-and-bounds surveys in section 24, Township 30 North, Range 2 East, accepted November 18, 2004, and officially filed November 30, 2004, for Group 875 Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 17, Township 10 South, Range 9 East, accepted November 1, 2004, and officially filed November 5, 2004, for Group 931 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat (3 sheets) representing the survey of the eighth standard parallel north (south boundary), the third guide meridian east (west boundary), the east and the north boundaries and the subdivisional lines, Townships 33 North, Range 13 East, accepted November 1, 2004, and officially filed November 10, 2004 for Group 885 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Region and Navajo Regional Office.

The plat representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and a portion of the subdivision of section 3; and the subdivision of section 3 and the metes-and-bounds survey in section 3, Township 9 North, Range 23 East, accepted October 4, 2004, and officially filed October 8, 2004 for Group 929 Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of the sixth standard parallel north (south boundary), the sixth guide meridian east (east boundary) and a portion of the north boundary, and the survey of a portion of the north boundary, and the subdivisional lines, Township 25 North, Range 24 East, accepted November 12, 2004, and officially filed November 19, 2004 for Group 863 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (2 sheets) representing the dependent resurvey of a portion of the subdivisional lines and a portion of the subdivision of sections 22, 23, 26 and 35 and the subdivision of a portion of sections 22, 23, and 26, and the metes-and-bounds survey in sections 23, 26, and 35, Township 8 North, Range 27 East, accepted December 8, 2004, and officially filed December 14, 2004 for Group 910 Arizona.

This plat was prepared at the request of the United States Forest Service.

The supplemental plat representing sections 27, 28k, 33 and 34 in Township 16 South, Range 30 East, accepted November 8, 2004, and officially filed November 19, 2004.

This supplemental plat was prepared at the request of the United States Forest Service.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, P.O. Box 1552, Phoenix, Arizona, 85001–1552.

Dated: January 6, 2005.

Stephen K. Hansen,

Acting Cadastral Chief.

[FR Doc. 05–972 Filed 1–18–05; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Preparation of an Environmental Assessment for Proposed Outer Continental Shelf Oil and Gas Lease Sale 196 in the Western Gulf of Mexico (2005)

AGENCY: Minerals Management Service, Interior.

ACTION: Preparation of an environmental assessment.

SUMMARY: The Minerals Management Service (MMS) is issuing this notice to advise the public, pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, that MMS intends to prepare an environmental assessment (EA) for proposed Outer Continental Shelf (OCS) oil and gas Lease Sale 196 in the Western Gulf of Mexico (GOM) (Lease Sale 196) scheduled for August 2005. The MMS is issuing this notice to facilitate public involvement. The preparation of this EA is the first step in the decision process for Lease Sale

196. The proposal and alternatives for Lease Sale 196 were identified by the MMS Director in January 2002 following the Call for Information and Nominations/Notice of Intent to Prepare an Environmental Impact Statement (EIS) and were analyzed in the Gulf of Mexico OCS Oil and Gas Lease Sales: 2003–2007; Central Planning Area Sales 185, 190, 194, 198, and 201; Western Planning Area Sales 187, 192, 196, and 200—Final Environmental Impact Statement; Volumes I and II (Multisale EIS, OCS EIS/EA MMS 2002–052). This EA will reexamine the potential environmental effects of the proposed action (the offering of all available unleased acreage in the Western Planning Area (WPA)) and its alternatives (the proposed action excluding the unleased blocks near biologically sensitive topographic features, and no action) based on any new information regarding potential impacts and issues that were not available at the time the Multisale EIS was prepared.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Chew, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, MS 5410, New Orleans, Louisiana 70123–2394. You may also contact Mr. Chew by telephone at (504) 736–2793.

SUPPLEMENTARY INFORMATION: In November 2002, MMS prepared a Multisale EIS that addressed nine proposed Federal actions that offer for lease areas on the GOM OCS that may contain economically recoverable oil and gas resources. Federal regulations allow for several related or similar proposals to be analyzed in one EIS (40 CFR 1502.4). Since each proposed lease sale and its projected activities are very similar each year for each planning area, a single EIS was prepared for the nine Central Planning Area (CPA) and WPA lease sales scheduled in the OCS Oil and Gas Leasing Program: 2002–2007 (the 5-Year Program). Under the 5-Year Program, five annual areawide lease sales are scheduled for the CPA (Lease Sales 185, 190, 194, 198, and 201) and five annual areawide lease sales are scheduled for the WPA (Lease Sales 184, 187, 192, 196, and 200). Lease Sale 184 was not addressed in the Multisale EIS; a separate EA was prepared for that proposal. The Multisale EIS addressed CPA Lease Sales 185, 190, 194, 198, and 201 scheduled for 2003, 2004, 2005, 2006, and 2007, respectively, and WPA Lease Sales 187, 192, 196, and 200 scheduled for 2003, 2004, 2005, and 2006, respectively. Although the Multisale EIS addresses nine proposed lease sales, at the completion of the EIS process, decisions were made only for proposed CPA Lease Sale 185 and proposed WPA Lease Sale 187. In the year prior to each subsequent proposed lease sale, an additional NEPA review will be conducted to address any new information relevant to that proposed action. After completion of the EA, MMS will determine whether to prepare a Finding of No Significant Impact (FONSI) or a Supplemental EIS. The MMS will then prepare and send Consistency Determinations (CD's) to the affected States to determine whether Lease Sale 196 is consistent with their federally-approved State coastal zone management programs. Finally, MMS will solicit comments via the Proposed Notice of Sale (PNOS) from the governors of the affected States on the size, timing, and location of Lease Sale 196. The tentative schedule for the pre-lease decision process for Lease Sale 196 is as follows: EA FONSI or Supplemental EIS decision, March 2005; CD's sent to affected States, March 2005; PNOS sent to governors of the affected States, March 2005; Final Notice of Sale published in the **Federal Register**, July 2005; and Lease Sale 196, August 2005.

Public Comments: Interested parties are requested to send within 30 days of this Notice's publication comments regarding any new information or issues that should be addressed in the EA. Comments may be submitted in one of the following three ways:

1. Comments may be submitted using MMS's new Public Connect on-line commenting system at *http://ocsconnect.mms.gov*. This is the preferred method for commenting. From the Public Connect ''Welcome'' screen, search for ''WPA Lease Sale 196 EA'' or select it from the ''Projects Open for Comment'' menu.

2. Written comments may be enclosed in an envelope labeled ''Comments on WPA Lease Sale 196 EA'' and mailed (or hand carried) to the Regional Supervisor, Leasing and Environment (MS 5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

3. Comments may be sent to the MMS e-mail address: *environment@mms.gov*.

To obtain single copies of the Multisale EIS, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). You may also view the Multisale EIS or check the list of libraries that have copies of the Multisale EIS on the MMS Web site at *http://www.gomr.mms.gov*.

Dated: November 22, 2004.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 05–1013 Filed 1–18–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Point Reyes National Seashore, CA: Boundary Revision To Include Certain Adjacent Real Property

Pursuant to the authority contained in the ''Act to establish the Point Reyes National Seashore in the State of California, and for other purposes, approved September 13, 1962'' (Pub. L. 87–657; 76 Stat. 538, as amended; 16 U.S.C. 459c–1(a)), notice is hereby given that the boundary of Point Reyes National Seashore is modified to include approximately 2.50 acres of real property adjacent to the park's prior boundary. This adjustment is accomplished to include private property that the owners wish to sell to the United States for the use of Point Reyes National Seashore and which the National Park Service has concluded would be a valuable addition to the Seashore. The property is described below:

All that certain real property situate in the County of Marin, State of California, described below as follows:

Parcel One

Beginning at a point distant South 39° 56′ 50″ East 328 feet; South 79° 51′ 10″ West 208.98 feet; South 46° 22′ 20″ West 78.33 feet; North 88° 57′ 30″ West 23.68 feet; South 64° 00′ West 20.0 feet and South 69° 00′ East 102.0 feet from the Westerly extremity of the course in the center line of Dover Road described as South 50° 03′ 10″ West 61.25 feet in the Deed from Western Title Guaranty Company to Sanford Hirshen, recorded September 11, 1967, in Book 2156 O.R. at Page 524, Marin County Records, and running thence North 69° 00′ West 102.0 feet to the center line of a 40 foot roadway, thence along said center line of said 40 foot roadway North 64° 00′ East 20.0 feet; thence leaving said center line South 88° 57′ 30″ East 23.68 feet North 46° 22′ 20″ East 78.33 feet and North 79° 51′ 10″ East 208.98 feet; thence South 39° 56′ 50″ East 164 feet more or less, to a point on the Southerly line of the tract of land conveyed to Marin County Abstract Company by Deed recorded November 16, 1951, in Book 717 O.R. at Page 409, Marin

County Records, thence along said Southerly line South 73° 00′ West 305 feet more or less, to a point which bears South 17° 00′ East from the point of commencement and thence North 17° 00′ West 80 feet more or less to the point of beginning.

Parcel Two

An easement for roadway and utilities 40 feet wide, the center line of which is described as follows:

Beginning at the Westerly extremity of a course in the center line of Dover Road described as South 11° 42′ West 87.78 feet in the Deed from Western Title Guaranty Company to Sanford Hirshen, recorded September 11, 1967 in Book 2156 of Official Records, at page 524, Marin County Records, and running thence South 11° 42′ West 46.12 feet; South 62° 54′ West 92.0 feet; South 18° 00′ East 22.0 feet; South 49° 40′ East 59.0 feet; South 31° 21′ East 46.0 feet; South 64° 00′ West 90.0 feet; South 44° 30′ West 73.51 feet and North 61° 16′ West 96.67 feet.

Parcel Three

Beginning at the Southwesterly extremity of the course set forth as ''South 50° 03′ 10″ West 61.25 feet'' in the Deed to Sanford Hirshen, recorded September 11, 1967 in Book 2156 of Official Records, at Page 524, being the centerline of a 50 foot roadway known as Dover Road, and running thence along said centerline on a curve to the left whose radius is 125 feet and whose center bears South 39° 56′ 50″ East a distance of 83.67 feet; thence South 11° 42′ West 133.9 feet to the centerline of a 40 foot roadway; thence along said centerline, South 62° 54′ West 92.0 feet, South 18° 00′ East 22.0 feet; South 49° 40′ East 59.0 feet and South 31° 21′ East 46.0 feet to an angle point in the Northerly line of Parcel One as described in the Deed to Christopher D. Burdick, et ux, recorded March 3, 1969 in Book 2278 of Official Records, at page 213; thence along the Northerly line of said Parcel, South 88° 57′ 30″ East 23.68 feet, North 46° 22′ 20″ East 78.33 feet and North 79° 51′ 20″ East 208.98 feet to the Northeasterly corner of said parcel so conveyed to Burdick and thence North 39° 56′ 50″ West 328.0 feet to the point of beginning.

Parcel Four

An easement for roadway over Dover Road, Sunnyside Drive and Drakes View Drive as the same are established by deeds of record.

These revisions in the park boundary are depicted on Drawing No. 612/80,500 A, Segment Map 14, revised March 2, 2004. This map is on file and available for inspection, and further information regarding this boundary change is available, at the following addresses: Director, National Park Service, Department of the Interior, Washington, DC 20240; Regional Director, Pacific West Region, National Park Service, 1111 Jackson St., Ste. 700, Oakland, CA 94607; Superintendent, Point Reyes National Seashore, Point Reyes Station, CA 94956.

Dated: June 24, 2004.

Jonathan B. Jarvis,

Regional Director, Pacific West Region, National Park Service.

Editorial Note: This document was received at the Office of the Federal Register on January 13, 2005.

[FR Doc. 05–984 Filed 1–18–05; 8:45 am]

BILLING CODE 4312–FW–P

DEPARTMENT OF THE INTERIOR

National Park Service, Pacific West Region

San Gabriel River Watershed Special Resource Study, Los Angeles and Orange Counties, CA; Notice of Scoping

Summary: Notice is hereby given in accordance with provisions of the National Environmental Policy Act of 1969 (Public Law 91–190) and Council on Environmental Quality's implementing regulations (40 CFR 1502.9(c)) that public scoping has been initiated for the conservation planning and environmental impact analysis process to identify and assess potential impacts of alternative resource protection and other considerations within the San Gabriel River Watershed Special Resource Study area in the Los Angeles Metropolitan Region. The purpose of the scoping process is to elicit public comment regarding issues and concerns, alternatives, and the nature and extent of potential environmental impacts (and as appropriate, mitigation measures) which should be addressed.

Background: As authorized by Public Law 108–042, the NPS is conducting a special resource study of the San Gabriel River and its tributaries from the city of Santa Fe Springs to the north, and the San Gabriel Mountains within the territory of the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy. The study area includes areas of the Angeles National Forest, as well as many urban communities along the San Gabriel River and its tributaries. Although the Angeles National Forest and various local and county parks provide recreational opportunities, many communities within the study area experience a lack of open space and their associated recreational opportunities.

In conducting the San Gabriel Watershed Special Resource Study, the NPS will evaluate the national significance of the area's natural and cultural resources. The NPS will also assess the area's suitability and feasibility to be a unit of the National Park System. Factors which the NPS study team will evaluate include: Whether the study area includes types or quality of resources not already adequately represented in the National Park System; whether long-term protection and public use of the area are feasible; and whether the area can be adequately protected and administered at a reasonable cost. The NPS's conclusions may vary for different portions of the study area.

The NPS will also consider: Alternative strategies for the management, protection and use of significant resources within the overall study area, including management by other public agencies or the private sector; technical or financial assistance available from established programs or special initiatives and partnerships; alternative designations to a national park unit and; cooperative management by NPS and other entities.

The authorizing statute directs the NPS to consider regional flood control and drainage needs and publicly owned infrastructure such as wastewater treatment facilities. Opportunities for increased open space and recreational opportunities will also be considered in the study.

Public Involvement: During the study process, a range of alternatives will be developed, in consultation with Federal, State and local governments and the public. The law authorizing this study directs the NPS to consult with the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy and with other appropriate Federal, State and local governmental entities. The NPS will conduct an environmental review of the alternatives and the potential impacts of resource protection considerations as part of the San Gabriel River Watershed Special Resource Study. At this time, it has not been determined whether an Environmental Assessment or an Environmental Impact Statement will be prepared, however, this scoping process will aid in the preparation of either document, and public comments will aid in making this determination. The public will have opportunities to comment and participate throughout the study

process, including the opportunity to review the environmental document and submit additional comments.

For initial scoping and alternatives development, the most useful comments are those that provide the NPS with assistance in identifying issues and concerns which should be addressed, or providing important information germane to this study. All responses to this Notice will also be used to establish a mailing list of interested persons, organizations, and agencies that desire to receive further information as the environmental document is developed.

The public scoping period for the San Gabriel River Watershed Special Resource Study will conclude 90 days after the publication of this Scoping Notice in the **Federal Register**. As soon as this date can be determined, it will be posted on the study Web site (noted below) and announced by press release to local and regional media. Scoping meetings will be held in the Los Angeles Region in the winter and/or spring of 2005. Interested individuals, organizations, and agencies wishing to provide written comments on issues or concerns should respond to: National Park Service, San Gabriel River Watershed Special Resource Study, 1111 Jackson Street, Suite 700, Oakland, CA 94607. Comments may also be submitted electronically through the NPS Planning, Environment and Public Comment (PEPC) system (which can be accessed through the study's Web site listed below). In addition, the study team may be contacted anytime via e-mail at *pwr_sangabriel@nps.gov.* If individuals submitting comments request that their name and/or address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Future Information: Further information about the study process and opportunities for the public to participate will be distributed via direct mailings, regional and local news media, and announcements on the San Gabriel Watershed Special Resource Study Web site (*http://www.nps.gov/pwro/sangabriel*).

Decision Process: Availability of the forthcoming draft environmental document for review and written comment will be announced by local and regional news media, the above listed Web site, and direct mailing. At this time the draft document is anticipated to be available for public review and comment by late 2006 or early 2007. Comments on the draft document will be fully considered in the decision making process and responded to as appropriate in the final document. The official responsible for the initial recommendation will be the Regional Director, Pacific West Region, National Park Service. The official responsible for amending or ratifying the recommendation and transmitting the final document to the Secretary of the Interior will be the Director of the National Park Service. The final document will identify the alternative that, in the professional judgment of the Director of the National Park Service, is the most effective and efficient method for protecting significant resources and providing for public enjoyment. The Secretary of the Interior subsequently will forward the completed study along with a recommendation regarding the Secretary's preferred management option for the area to Congress for their consideration. It is anticipated that the final study report will be available in winter 2008.

Dated: December 14, 2004.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 05–986 Filed 1–18–05; 8:45 am]

BILLING CODE 4312–FW–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Commercial Services Plan and Final Environmental Impact Statement, Glacier National Park, Montana

AGENCY: National Park Services, Department of the Interior.

ACTION: Notice of availability of a record of decision on the final environmental impact statement for the final commercial services plan, Glacier National Park, Montana.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969, Stat. 852, 853, codified as amended at 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the Final Commercial Services Plan and Final Environmental Impact Statement, Glacier National Park, Montana. On August 20, 2004, the Director, Intermountain Region approved the Record of Decision for the project. As soon as practicable the National Park Service will begin to implement the Preferred Alternatives contained in the FEIS issued on July 9, 2004. The following actions were summarized from the Record of Decision and will occur under the preferred alternatives. The Final Commercial Services Plan identified a vision for commercial services in the park, identified those services that are ''necessary and appropriate'' according to criteria developed in accordance with Title IV of the National Parks Omnibus Management Act of 1998. Standards and prescriptions were developed to further describe how each service will be provided. The Plan also refined the visitor services zone as conceptually described in Glacier National Park's *General Management Plan*—1999. Overall, the Plan maintains what currently exists in the park, however the operation dates for each of the developed areas have been increased slightly and the number of overnight rooms in the park can be increased from 512 to 540. The necessary and appropriate services that were addressed specifically include Granite Park Chalet, Commercially Guided Day Hiking, Guided Underwater Diving tours, Firewood Sales, Public Showers, Interpretive Boat tours and Boat Taxi or Boat Transportation Services, Motor Vehicle tours, Taxi Service, Shuttling of Private Vehicles, Public Transportation Service, Horseback Riding and Packing Services, Step-On Guide Service and Commercially Guided Bicycle Tours. Each developed area was also addressed that contained commercial services. These were Apgar Village, Lake McDonald, Two Medicine, Rising Sun, Many Glacier, and Swiftcurrent developed areas. A number of other actions will be implemented such as improved interpretation and orientation at each developed area, upgraded facilities to comply with life safety, accessibility and building codes, and boat rentals will be provided by the boat tour concessioner at existing locations. A more complete list is in the Record of Decision and the *Final Commercial Services Plan.* A number of mitigation measures will be adhered to during construction and or operation of the commercial services. These measures are in addition to any other federal, state or local permits and requirements and specific protection guidelines to preserve park resources. They are listed in detail in the *Final Commercial Services Plan and Final Environmental Impact Statement.*

These actions and alternatives were analyzed in the Draft and Final

Environmental Impact Statements. The full range of foreseeable environmental consequences were assessed, and appropriate mitigation measures were identified.

The Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding on impairment of park resources and values, a listing of measures to minimize environmental harm, an overview of public involvement in the decision-making process, and a Statement of Findings.

FOR FURTHER INFORMATION CONTACT: Mary Riddle, Glacier National Park, West Glacier, Montana, 59936. (406) 888–7898, *mary_riddle@nps.gov*.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at *http://www.nps.gov/glac/plans.htm*.

Dated: September 16, 2004.

Michael D. Snyder,

Deputy Director, Intermountain Region, National Park Service.

[FR Doc. 05–983 Filed 1–18–05; 8:45 am]

BILLING CODE 4312–HY–M

DEPARTMENT OF THE INTERIOR

National Park Service

AGENCY: National Park Service, Interior.

ACTION: Announcement of the National Park Subsistence Resource Commission (SRC) meetings.

SUMMARY: The National Park Service (NPS) announces the SRC meeting schedule for the following NPS areas within the Alaska Region: Aniakchak National Monument, Cape Krusenstern National Monument, Denali National Park, Kobuk Valley National Park, Lake Clark National Park and Wrangell-St. Elias National Park. The purpose of each meeting is to continue work authorized and proposed in subsistence hunting program recommendations and other related subsistence management issues. Each meeting is open to the public. Each SRC meeting will have time allocated for hearing public comments. The public is welcomed to present written or oral comments to the SRC. Draft meeting minutes will be available for public inspection approximately six weeks after each meeting.

The NPS SRC program is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The meeting times and locations are:

1. Kobuk Valley National Park SRC, Monday, February 7, 2005, from 9:30 a.m. to approximately 5 p.m. at the U.S. Fish and Wildlife Service Conference Room in Kotzebue, AK. **FOR FURTHER INFORMATION CONTACT:** Kobuk Valley National Park, P.O. Box 1029, Kotzebue, AK 99752. Telephone: (907) 442–3890. Julie Hopkins, Superintendent, Email: *julie_hopkins@nps.gov*; Willie Goodwin, Subsistence Manager, Email: *willie_goodwin@nps.gov*; or Ken Adkisson, Subsistence Manager. Telephone: (907) 443–2522. Fax: (907) 443–6139. Email: *ken_adkisson@nps.gov*.

2. Cape Krusenstern National Monument SRC, Tuesday, February 8, 2005, from 9:30 a.m. to approximately 5 p.m. at the U.S. Fish and Wildlife Service Conference Room in Kotzebue, AK. **FOR FURTHER INFORMATION CONTACT:** Kobuk Valley National Park, P.O. Box 1029, Kotzebue, AK 99752. Telephone: (907) 442–3890. Julie Hopkins, Superintendent, Email: *julie_hopkins@nps.gov*; Willie Goodwin, Subsistence Manager, Email: *willie_goodwin@nps.gov*; or Ken Adkisson, Subsistence Manager. Telephone: (907) 443–2522. Fax: (907) 443–6139. Email: *ken_adkisson@nps.gov*.

3. Lake Clark National Park SRC, Wednesday, February 16, 2005, from 1 p.m. to approximately 5 p.m. at the Lake Clark National Park and Preserve Visitor's Center, Port Alsworth, AK. **FOR FURTHER INFORMATION CONTACT:** Lake Clark National Park and Preserve, Mary McBurney, Subsistence Manager, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. Telephone: (907) 644–3598. Fax: (907) 644–3802. Email: *mary_mcburney@nps.gov*.

4. Wrangell-St. Elias National Park SRC, Wednesday, February 16 and Thursday, February 17, 2005, from 9:30 a.m. to 5 p.m. at the Chistochina Community Hall, Chistochina, AK (approximately Mile Post 33.7 on the Tok Cut-Off Road). **FOR FURTHER INFORMATION CONTACT:** Wrangell-St. Elias National Park and Preserve, Barbara Cellarius, Subsistence Manager/Cultural Anthropologist, P.O. Box 439, Copper Center, AK 99573. Telephone: (907) 822–7236 or (907) 822–5234. Fax: (907) 822–7259. Email: *barbara_cellarius@nps.gov*.

5. Denali National Park SRC, Friday, February 18, 2005, from 9 a.m. to approximately 5 p.m. at the Cantwell Community Hall in Cantwell, AK. **FOR FURTHER INFORMATION CONTACT:** Denali National Park and Preserve, Hollis Twitchell, Subsistence Manager, P.O. Box 9, Denali Park, AK 99755. Telephone: (907) 455–0673 or (907) 683–9544. Fax: (907) 455–0601 or (907) 683–9617. Email: *hollis_twitchell@nps.gov*.

6. Aniakchak National Monument SRC, Tuesday, February 22, 2005, from 1 p.m. to approximately 5 p.m. at the Chignik Lake Subsistence Office. **FOR FURTHER INFORMATION CONTACT:** Aniakchak National Monument and Preserve, Mary McBurney, Subsistence Manager, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. Telephone: (907) 644–3598. Fax: (907) 644–3802. Email: *mary_mcburney@nps.gov*.

SUPPLEMENTARY INFORMATION: Locations and dates may need to be changed based on weather or local circumstances. Notice of each meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. The agendas for each meeting include the following:

1. Call to order (SRC Chair).
2. SRC roll call and confirmation of quorum.
3. SRC Chair and Superintendent's welcome and introductions.
4. Review and approve agenda.
5. Review and adopt minutes from last meeting.
6. Review Commission purpose and status of membership.
7. Commission member reports.
8. Superintendent and NPS staff reports.
9. Federal Subsistence Board: Review wildlife and fisheries proposals, reports and board actions.
10. 2004 SRC Chairs workshop update.
11. New business.
12. Agency and public comments.
13. SRC work session. Prepare correspondence and recommendations.
14. Set time and place of next SRC meeting.
15. Adjournment.

Marcia Blaszak,

Regional Director, Alaska Region.

[FR Doc. 05–985 Filed 1–18–05; 8:45 am]

BILLING CODE 4312–HE–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Long-Term Water Service Contract Renewals—American River Division

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the draft environmental impact statement (EIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation (Reclamation), as lead Federal agency, has made available for public review and comment a Draft EIS for the Central Valley Project Long-Term Water Service Contract Renewals—American River Division. The Draft EIS describes and presents the environmental effects of four alternatives, including no action, for renewal of water service contracts to American River Division contractors that include; the City of Roseville, East Bay Municipal District, El Dorado Irrigation District, Placer County Water Agency, Sacramento County Water Agency, Sacramento Municipal Utilities District, and San Juan Water District.

DATES: Written comments on the Draft EIS will be accepted on or before March 21, 2005.

ADDRESSES: Send comments on the Draft EIS to Mr. David Robinson, Bureau of Reclamation, American River Division LTCR, 7794 Folsom Dam Road, Folsom, CA 95630–1799.

Copies of the Draft EIS may be requested from Ms. Sammie Cervantes, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825 or by calling 916–978–5104, TDD 916–978–5608. See Supplementary Information section for locations where copies of the Draft EIS are available for public review.

FOR FURTHER INFORMATION CONTACT: David Robinson, Environmental Specialist, Bureau of Reclamation, at 916–989–7179, TDD 916–989–7285.

SUPPLEMENTARY INFORMATION: The Draft EIS will address impacts related to renewal of long-term water service contracts delivering Central Valley Project water for irrigation and municipal and industrial uses to seven districts in the American River Division. The Draft EIS will describe and analyze the effects of contract renewals on fish resources, vegetation and wildlife, hydrology and water quality, recreation, visual and cultural resources, land use, geology and soils, traffic and circulation, air quality, noise, and hazards and hazardous materials.

Copies of the Draft EIS are available for public review at the following locations:

- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225, 303–445–2072;
- Bureau of Reclamation, Office of Public Affairs, 2800 Cottage Way, Sacramento, CA 95825–1898, 916–978–5100;
- Bureau of Reclamation, Central California Area Office, 7794 Folsom Dam Road, Folsom, CA 95630, 916–988–1707;
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW., Main Interior Building, Washington, DC 20240–0001.

Reclamation's practice is to make comments including names and home addresses of respondents available for public review. Individual respondents may request that we withhold their home address from public disclosure, which will be honored to the extent allowable by law. There may be circumstances in which a respondent's identity may also be withheld from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Dated: August 24, 2004.

Kirk C. Rodgers,

Regional Director, Mid-Pacific Region.

[FR Doc. 05–1043 Filed 1–18–05; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–531]

In the Matter of Certain Network Controllers and Products Containing Same; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 17, 2004, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Marvell International, Ltd. of Bermuda. A supplement to the complaint was filed on January 3, 2005. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain network controllers and products containing same by reason of infringement of claims 68, 70, and 71 of U.S. Patent No. 6,462,688, and claims 22–32, 54, and 55 of U.S. Patent No. 6,775,529. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent limited exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Rett Snotherly, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2599.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2004).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 11, 2005, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain network controllers and products containing same by reason of infringement of claims 68, 70, or 71 of U.S. Patent No. 6,462,688, or claims 22–32, 54, or 55 of U.S. Patent No. 6,775,529, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Marvell International, Ltd., Canon's Court, 22 Victoria Street, Hamilton HM 12, Bermuda.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Realtek Semiconductor Corporation, No. 2, Industry East Road IX, 41 Science-Based Industrial Park, Hsinchu 300, Taiwan.

Real Communications, Inc., 2870 Zanker Road, Suite 110, San Jose, CA 95134.

(c) Rett Snotherly, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–O, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: January 12, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–1020 Filed 1–18–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Consumer Price Index Commodities and Services Survey.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before March 21, 2005.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (*See* **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

Under the direction of the Secretary of Labor, the Bureau of Labor Statistics (BLS) is directed by law to collect, collate, and report full and complete statistics on the conditions of labor and the products and distribution of the products of the same; the Consumer Price Index (CPI) is one of these statistics. The collection of data from a wide spectrum of retail establishments and government agencies is essential for the timely and accurate calculation of the Commodities and Services (C&S) component of the CPI.

The CPI is the only index compiled by the U.S. Government that is designed to measure changes in the purchasing power of the urban consumer's dollar. The CPI is a measure of the average change in prices over time paid by urban consumers for a market basket of goods and services.

The CPI is used most widely as a measure of inflation, and serves as an indicator of the effectiveness of government economic policy. It also is used as a deflator of other economic series, that is, to adjust other series for price changes and to translate these series into inflation-free dollars. A third major use of the CPI is to adjust income payments. Almost two million workers are covered by collective bargaining contracts which provide for increases in wage rates based on increases in the CPI.

The continuation of the collection of prices for the CPI is essential since the CPI is the nation's chief source of information on retail price changes. If the information on C&S prices were not collected, Federal fiscal and monetary policies would be hampered due to the lack of information on price changes in a major sector of the U.S. economy, and estimates of the real value of the Gross National Product could not be made. The consequences to both the Federal and private sectors would be far-reaching and would have serious repercussions on Federal government policy and institutions.

II. Current Action

The Telephone Point of Purchase Survey (TPOPS) is a household survey used to identify the universe of outlets from which sampled outlets are selected. A quarter of the CPI's priced geographic areas are surveyed each year, so that over a four year period the entire outlet sample is reselected.

A new initiative to reinitiate a subset of the currently priced item sample in existing outlets to account for new goods has recently been deployed. This initiative is referred to as Item Rotation. Item rotation is a process that allows for the inclusion of new goods when reinitiating existing quotes within currently priced outlets and enables the item sample to be refreshed without the expense and delay of a full TPOPS rotation. Item rotation is completed at

currently priced outlets for selected item categories where the priced items are reinitiated two years after the original initiation, thus offering the chance that new goods will be selected for pricing. An example is prescription drugs where, based on current sales data, a new sample of prescribed drugs will be selected to replace the currently priced drugs. Since this reselection will include all currently dispensed drugs, those prescription drugs that have been introduced since the previous initiation will have a chance to be selected.

A key element completed during 2004 was to convert all on going data collection and transmission to electronic systems. The introduction of a Computer-Assisted Data Collection (CADC) for the C&S portion of the CPI has resulted in significant advantages by increasing productivity and improving the overall quality of the CPI. Electronic data collection and transmission provide long-term savings through a major reduction of mail, paperwork, and printing costs. Electronic systems allow for price collection to cover the entire month, reduce data capture mistakes, speed up review time, and to improve survey logistics management.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Consumer Price Index Commodities and Services Survey.

OMB Number: 1220–0039.

Affected Public: Business or other for-profit; not-for-profit institutions; and State, local, or tribal government.

Activity	Total number of respondents	Frequency	Total annual responses	Hours per response (average)	Estimated total burden hours
Pricing	42,314	Monthly/Bimonthly	385,904	.33	127,348
Initiation	12,634	Annual	12,634	1.0	12,634
Re-initiation	440	Annual	440	1.0	440
Test pricing	1,900	Annual	1,900	.65	1,235
Totals	57,288		400,878		141,657

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintenance): $0.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed in Washington, DC, this 11th day of January 2005.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 05–1002 Filed 1–18–05; 8:45 am]

BILLING CODE 4510–28–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2005–1 CARP]

Notice of Intent To Audit

AGENCY: Copyright Office, Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Office of the Library of Congress is announcing receipt of three notices of intent to audit preexisting subscription services that transmit sound recordings under statutory licenses. The audits intend to verify statements of account for the years 2001, 2002, and 2003.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Associate General Counsel, or Abioye E. Oyewole, CARP Specialist, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Telephone: (202) 707–8380. Telefax: (202) 707–3423.

SUPPLEMENTARY INFORMATION: Section 114(d)(2) of title 17 of the United States Code provides statutory licensing requirements for subscription services that perform sound recordings by means of digital audio transmissions. Those that were in existence and were performing sound recordings by means of interactive audio-only subscription digital audio transmissions to the public for a fee on or before July 31, 1998, are known as ''preexisting subscription services.'' Three services fall within this category: DMX Music, Inc., Muzak LLC, and Music Choice (''the Services''). These services make payments of royalty fees to and file reports of sound recording performances with SoundExchange. SoundExchange is a collecting rights entity that was designated by the Librarian of Congress to collect and distribute royalty fee payments made under section 114(d)(2) by the three preexisting subscription services. *See* 68 FR 39837 (July 3, 2003).

Pursuant to section 260.5 of title 37 of the Code of Federal Regulations, an interested party may initiate an audit of any one of the three preexisting services. SoundExchange, as the designated collector and distributor of royalties paid by preexisting subscription services to interested copyright parties, is an interested party and may conduct one audit per calendar year of one or all of the Services for the purpose of verifying their statements of account. As a preliminary matter, the interested party is required to submit a notice of its intent to audit a preexisting subscription service with the Copyright Office and to serve this notice on the service to be audited. 37 CFR 260.5(c).

On December 21, 2004, SoundExchange filed with the Copyright Office three notices of intent to audit the preexisting subscription

services [1,2,3] for the years 2001, 2002, and 2003. As stated in section 260.5(c), the Copyright Office then is required to publish a notice in the **Federal Register** within thirty days of receipt of the filing announcing an interested party's intent to conduct an audit.

In accordance with this regulation the Office is publishing today's notice to fulfill this requirement with respect to SoundExchange's notices of intent to audit.

Dated: January 13, 2005

Tanya M. Sandros,

Associate General Counsel.

[FR Doc. 05–1037 Filed 1–18–05; 8:45 am]

BILLING CODE 1410–33–S

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting Notice

TIME AND DATE: 9:30 a.m., Tuesday, January 25, 2005.

PLACE: NTSB Board Room, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is Open to the Public.

MATTERS TO BE CONSIDERED: 7686 Railroad Accident Report—Derailment of Canadian National Freight Train M33371–08 and Subsequent Release of Hazardous Materials in Tamaroa, Illinois, February 9, 2003.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, January 21, 2005.

The public may view the meeting via a live or archived Web cast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov*.

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: January 14, 2005.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 05–1138 Filed 1–14–05; 1:26 pm]

BILLING CODE 7533–01–M

[1] A copy of the Notice of Intent to Audit DMX Music, Inc. will be posted on the Office website at http://www.copyright.gov/carp/dmx__notice.pdf.

[2] A copy of the Notice of Intent to Audit Muzak LLC will be posted on the Office website at http://www.copyright.gov/carp/muzak__notice.pdf.

[3] A copy of the Notice of Intent to Audit Music Choice will be posted on the Office website at http://www.copyright.gov/carp/musicchoice__notice.pdf.

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 030–05980, 030–05982] [License Nos. 37–00030–02, 37–00030–08, EA–04–148]

In the Matter of Safety Light Corporation, Bloomsburg, PA; Order Suspending License (Effective Immediately)

Safety Light Corporation (the Licensee or SLC) is the holder of two Byproduct Material Licenses issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30 for the facility at 4150–A Old Berwick Road near Bloomsburg, Pennsylvania. License No. 37–00030–02 authorizes the Licensee to characterize and decommission its contaminated facilities, equipment, and land. License No. 37–00030–08 authorizes, among other things, the Licensee to manufacture self-luminous signs and foils using tritium. The licenses were last renewed on December 28, 1999, and are due to expire on December 31, 2004.

On December 28, 1999, License Nos. 37–00030–02 and 37–00030–08 were renewed. As part of these renewals, License Conditions were included that exempted the Licensee from certain of the Commission's financial assurance requirements and required the Licensee to develop plans which would address the License Termination Rule (10 CFR part 20, subpart E). This exemption was granted in response to the Licensee's request to the Commission to exempt the Licensee from the financial assurance decommissioning requirements set forth in 10 CFR 30.32 and 10 CFR 30.35, based on the lack of sufficient funds available at the time to assure that adequate financial ability existed to decommission the facility. In lieu of complying with 10 CFR 30.35, the Licensee committed to (1) develop a schedule and plan, for NRC review and approval, for additional site characterization and to develop revised cost estimates including strategies for site decommissioning that would comply with the criteria specified in the license termination rule, 10 CFR 30.36, and (2) contribute specified monthly payments ($7,000 per month in 2000; $8,000 per month in 2001 and 2002; and $9,000 per month in 2003 and 2004) to a decommissioning trust fund over the life of the license to support decommissioning activities. The NRC specifically approved an exemption, in Condition 16 of Amendment No. 51 for License 37–00030–02 and Condition 20.A of Amendment No. 13 for License 37–00030–08, provided that the licensee make the specified monthly payments into a decommissioning trust fund. The NRC granted the renewal of the two licenses based on the Licensee's continued ability to provide sufficient remediation funding and adequate security of radioactive materials at the facility.

On November 21, 2003, the NRC learned, during telephone conversations with Licensee management, that the Licensee had not made all payments into its decommissioning trust fund, as required by Condition 16 (License No. 37–00030–02) and Condition 20.A (License No. 37–00030–08). The Licensee failed to make several prescribed deposits into the decommissioning trust fund over the period from May 2001 to December 2002. The Licensee made all overdue payments by February 2003 to address the deficit that existed at the end of 2002. However, starting in January 2003, the Licensee again failed to make the total prescribed payments into the decommissioning trust fund, resulting in a deficit of $81,000 by the end of November 2003.

Upon learning of the foregoing, on December 19, 2003, the NRC issued a Demand for Information to SLC which required the Licensee to submit to the NRC the following information:

1. Detailed schedule for making all overdue payments, with interest, to the decommissioning trust fund;

2. Reasons why the Licensee did not make the required payments, as scheduled, to the decommissioning trust fund;

1. Reasons why the NRC should have confidence that the Licensee will, in the future, make the required monthly deposits to the decommissioning trust fund;

2. Assurance from the Licensee, that, should it encounter any difficulty making required monthly deposits in the future, it will promptly notify the NRC that there will be a delay in making a specific deposit, and provide the reasons for the delay;

3. Reasons why the NRC should have confidence that in the future, the Licensee will adhere to license conditions and applicable NRC requirements;

4. Reasons why, in light of the Licensee's past failure to make all required payments to the trust fund, License Nos. 37–00030–02 and 37–00030–08 should not be modified, suspended, or revoked.

On January 16, 2004, the Licensee responded to the Demand for Information and indicated, in part, that the Licensee could not submit a detailed schedule for making overdue payments given the Licensee's inability to

accurately predict future sales and cash flow. The Licensee also indicated that a slowdown in the Licensee's business activity caused by a general economic downturn made it impossible to stay current with the Licensee's payment obligations. At the same time, the Licensee indicated that aggressive marketing efforts, along with an improving economy, led to an increase in order activity which it expected to translate into an upturn in business.

The Licensee made all of the prescribed deposits from December 2003 through November 2004. In addition, the Licensee made payments of amounts in arrears in December 2003, February 2004, and October 2004, resulting in a deficit of $36,000 plus interest to the decommissioning trust fund as of November 30, 2004.

The Licensee submitted license renewal applications for License Nos. 37–00030–02 and 37–00030–08 on April 22, 2004. As noted in the letter transmitting this Order to the Licensee, the NRC denied the renewal applications based on the Licensee's failure to demonstrate compliance with the requirements of 10 CFR 30.35, as well as the Licensee's violation of several conditions of its licenses, including the failure to make the required monthly payments into the decommissioning trust fund.

The NRC Office of Investigations conducted an investigation into the Licensee's failure to make the required monthly payments to the decommissioning trust fund, and concluded that the Licensee's management had deliberately violated the requirement to make the prescribed payments to the trust fund. In a July 1, 2004 letter, the NRC informed the Licensee of this apparent deliberate violation of the License Conditions and invited the licensee to a predecisional enforcement conference to discuss this matter. At the pre-decisional enforcement conference held on July 20, 2004, SLC management stated that a general downturn in business conditions led to the Licensee's failure to make payments. Nonetheless, the NRC maintains that the violation was deliberate in that the Licensee admitted knowledge of the requirement to make payments to the trust fund, yet failed to do so. The obligation to make the specified payments set forth in the license conditions is unqualified and is not subject to the state of SLC's business conditions, and was material to the granting of an exemption to the Licensee in connection with the renewal of its licenses in 1999. The Licensee's deliberate failure to make the required payments to the trust fund, as required by license conditions 16 and 20.A, voided the exemption from the financial assurance requirements of 10 CFR 30.35, and placed the Licensee in continued violation of these license conditions and 10 CFR 30.35. This deliberate failure by the Licensee has significant health and safety implications in that these regulatory requirements are intended to ensure the availability of adequate funds for characterization, packaging, and disposal of radioactive waste from the Licensee's site.

Based on the Licensee's willful failure to make the required scheduled payments into the decommissioning trust fund as required by its licenses, and the resultant implication for public health and safety, I lack the requisite reasonable assurance that the Licensee's current operations can be conducted under License Nos. 37–00030–02 and 37–00030–08 in compliance with the Commission's requirements and that the health and safety of the public, including the Licensee's employees, will be protected. Therefore, the public health, safety, and interest require that License Nos. 37–00030–02 and 37–00030–08 be suspended and that the Licensee must develop a plan for the orderly shutdown of its licensed activities. Furthermore, pursuant to 10 CFR 2.202, I find that given the willful nature of the violation of Conditions 16 and 20.A. of License Nos. 37–00030–02 and 37–00030–08, respectively, and 10 CFR 30.35, as well as the related effect on public health and safety, this Order shall be immediately effective.

In accordance with 10 CFR 30.36 (b) and (c), these licenses will continue in effect beyond the expiration date with respect to possession of byproduct material until the Commission notifies the Licensee in writing that the licenses are terminated. During this time, the Licensee shall limit actions involving byproduct material to those related to decommissioning and continue to control entry to restricted areas until they are suitable for release in accordance with NRC requirements. The Licensee is not authorized to receive any additional licensed material beyond the license expiration date but shall continue to take such actions as are needed to facilitate the decommissioning of the site, including the processing of the existing inventory of tritium to produce devices for transfer to authorized recipients. These actions are described in Section V below.

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 30, *It is hereby ordered, effective immediately, that:*

A. License Nos. 37–00030–02 and 37–00030–08 are suspended on January 1, 2005, excepting those activities addressed in the shutdown plan prepared in accordance with item B. below and 10 CFR 30.36(b) and (c), pending further Order.

B. The Licensee shall, by December 20, 2004, submit to the Regional Administrator, Region I, for approval, a plan for the orderly shutdown of its licensed activities over a period beginning on January 1, 2005, to be completed by March 31, 2005. This plan shall include provisions to:

1. Cease receipt of licensed material at the Licensee's Bloomsburg, Pennsylvania site;

2. Process existing inventory of licensed material into finished products for transfer to authorized recipients;

3. Transfer, or maintain in secure storage, the remaining inventory of tritium at the site;

4. Notify SLC customers of exit signs, or other devices containing licensed material, that they may not return these signs or devices to the licensee's Bloomsburg, Pennsylvania facility;

5. Provide continued security for the Licensee's Bloomsburg, Pennsylvania facility to assure safe conditions at the site; and

6. Provide continued heating, electrical power and other utility service.

The Regional Administrator, Region I, may, in writing, relax or rescind this order upon demonstration by the Licensee of good cause.

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear

Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies of the hearing request also should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania, and to the Licensee. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. *A request for hearing shall not stay the immediate effectiveness of this order.*

For the Nuclear Regulatory Commission.

Dated this 10th day of December 2004.

Margaret V. Federline,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–987 Filed 1–18–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–155]

Environmental Assessment and Finding of No Significant Impact for Consumers Energy's Request To Modify Existing § 20.2002 Authorization, for Big Rock Point, License DPR–006, Charlevoix County, MI

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: James Shepherd, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7E18, Washington, DC 20555–0001. Telephone: (301) 415–6712; e-mail *jcs2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering approval of a request to dispose of demolition debris contaminated with polychlorobiphenyl (PCB) in accordance with Title 10 of the Code of Federal Regulations (10 CFR) Section 20.2002 for Facility Operating License No. DPR–6, issued to Consumers Energy Company, ((CE) or the licensee), for the possession of the Big Rock Point (BRP) Plant, located in Charlevoix County, Michigan. This authorization will revise CE's existing authority to dispose of low-contamination material in a State of Michigan Type II landfill in accordance with 10 CFR 20.2002 by authorizing CE to dispose of such waste that also has PCB at a landfill licensed to accept PCBs. This proposed action would also exempt the low-contaminated material authorized for disposal from further Atomic Energy Act (AEA) and NRC licensing requirements. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of 10 CFR part 51. Based upon the EA, the NRC has determined that a Finding of No Significant Impact (FONSI) is appropriate.

II. Environmental Assessment

Background

On March 14, 2001, in accordance with 10 CFR 20.2002, the licensee submitted a request to dispose of low-activity demolition debris from the Big Rock Point (BRP) Restoration Site in a Type II sanitary landfill approximately 100 km (60 mi) from the site, licensed by the State of Michigan, in accordance with 10 CFR 20.2002. The licensee later revised the request on May 18, 2001 and June 20, 2001. NRC approved the request in May, 2002, and BRP began shipping material to the landfill.

Subsequently, debris coated with polychlorobiphenyl (PCB)-contaminated paint, mainly structural steel, was identified during demolition. The State of Michigan Type II landfill that is currently accepting the debris contaminated with residual radioactivity does not accept PCB bulk product waste. Therefore, on September 15, 2004, the licensee submitted a revised request to dispose of about 1.4 million kilograms (three million pounds) of low-activity PCB bulk product waste in an alternate landfill, approximately 445 km (275 mi) from the site, licensed by the State of Michigan and the U.S. Environmental Protection Agency (EPA) to accept PCBs.

The licensee will continue to ship low-activity demolition debris that is not contaminated with PCB to the original Type II landfill.

A comparison of the estimates of waste to be disposed and the time for disposal is given in the table below. As discussed below, there will be lighter loads, thus a slightly lower dose rate for the drivers, but more total shipments than was estimated in the 2001 request. Because of the increase in total waste, there will also be slight increases in dose rate to the landfill workers and postulated resident farmer compared to the 2001 estimates.

TABLE 1.—COMPARISON OF WASTE ESTIMATES

Item	2001	2004
Total Waste	38.3 million kg (84.5 million lbs)	51.3 million kg (113 million lbs).
Rad Waste (remaining)	38.3 million kg 84.5 million lbs)	22.1 million kg (48.7 million lbs).

TABLE 1.—COMPARISON OF WASTE ESTIMATES—Continued

Item	2001	2004
PCB Waste	0	1.4 million kg (3 million lbs).
Total shipping time	1 year	3 years.

Review Scope

The purpose of this EA is to assess the environmental impacts of CE's request to modify its existing authority to dispose of low-contaminated waste in a licensed landfill that would allow it to dispose of similar waste that is also contaminated with PCBs in another landfill licensed to receive PCBs. The scope of this EA is limited to evaluating potential environmental effects due to the longer shipping distance to the PCB-licensed landfill.

Identification of the Proposed Action

The proposed action would approve the disposal of BRP Plant demolition debris that could contain trace quantities of licensed materials and PCB at a landfill licensed by the State of Michigan and the (EPA) to accept PCBs. An approval would also exempt the low-contamination material from further Atomic Energy Act (AEA) and NRC licensing requirements. The material comprises structural steel coated with PCB-contaminated paint, potentially including exterior steel from the containment building, classified by the EPA as PCB bulk product waste, originating from decommissioning activities. The existing radiological survey process will be used to determine if the debris is acceptable for landfill disposal. The licensed disposal site is located approximately 445 km (275 mi) from Big Rock Point. Landfill design and institutional controls for this facility are equal or more restrictive than the requirements placed on a State of Michigan licensed Type II landfill currently used.

The proposed action is in accordance with the licensee's application requesting approval dated September 15, 2004.

The Need for the Proposed Action

The proposed action is needed to dispose of structural steel coated with PCB-contaminated paint, potentially including exterior steel from the containment building, classified by the EPA as PCB bulk product waste, that may contain trace quantities of licensed material in a landfill licensed by the State of Michigan and EPA to accept PCBs prior to license termination. Currently, the BRP Plant is authorized to dispose of material at a State of Michigan Type II landfill. However, this landfill is not licensed to accepted PCBs. Therefore, BRP is seeking to modify its existing § 20.2002 authorization granted in 2002, so it can dispose of materials with PCB-contaminated paint in a landfill licensed to receive it.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action, and concludes that the environmental impacts of disposing up to 1.4 million kilograms (3 million pounds) of painted structural steel in which non-liquid PCBs are contained within the dried paint matrix, at a disposal facility licensed to accept PCB waste, are bounded by the previous EA (ADAMS Accession No. ML013370344). Adherence to the radiological survey process ensures that the potential radiological dose posed by the demolition debris to a transport worker, a landfill worker, or a member of the public is conservatively estimated at less than 10 μSv/yr (1 mrem/yr). The transportation worker scenario results in revised doses of 3.20 μSv/yr (0.320 mrem/yr), because of the lighter loads for a driver to the current State of Michigan licensed Type II landfill, and 1.78 μSv/yr (0.178 mrem/yr) for a driver to the alternate licensed PCB landfill. The landfill worker scenario results in revised doses of 2.91 μSv/yr (0.291 mrem/yr) for a worker at the current State of Michigan licensed Type II landfill, and 0.182 μSv/yr (0.0182 mrem/yr) for a worker at the alternate licensed PCB landfill because of the small amount of radioactive waste to be disposed at this landfill. The calculated doses for the landfills are 0.178 μSv/yr (0.0178 mrem/yr) for a resident living at the Type II landfill site, and 0.01 μSv/yr (0.001 mrem/yr) for a resident living at the licensed PCB landfill site. Disposal of the demolition debris in the manner proposed is protective of public health and safety, is consistent with as low as reasonably achievable, complies with EPA requirements, and is the most cost-effective alternative.

The proposed action and attendant exemption of the material from further AEA and NRC licensing requirements will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and, because the waste will be disposed in a facility licensed to receive PCBs, it has no other environmental impacts. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in handling the debris as low level radioactive waste and shipping it to a low level waste facility. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in BRP's Environmental Report for Decommissioning, dated February 27, 1995, or in the ''Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities'' (NUREG–0586, Supplement 1).

Agencies and Persons Consulted

On December 29, 2004, the staff consulted with the Michigan State official, Mr. Pete Quackenbush of the Michigan Department of Environmental Quality, Waste and Hazardous Materials Division regarding the environmental impact of the proposed action. The State official had no comments.

III. Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the

human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

For further details with respect to the proposed action, see the licensee's letter dated September 15, 2004 (ADAMS Accession No. ML042640208). As of October 25, 2004, the NRC initiated an additional security review of publicly available documents to ensure that potentially information is removed from the ADAMS database accessible through the NRC's web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room pending resumption of public access to ADAMS. The NRC Public Documents Room is located at NRC Headquarters in Rockville, MD, and can be contacted at (800) 397–4209. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). 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 at *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 11th day of January, 2005.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Deputy Director, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–988 Filed 1–18–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of January 17, 24, 31, February 7, 14, 21, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of January 17, 2005

Tuesday, January 18, 2005

9:55 a.m., Affirmation Session (Public Meeting) (Tentative).

a. System Energy Resources Inc. (Early Site Permit for Grand Gulf Nuclear Site), Docket Number 52–009, Appeal by National Association for the Advancement of Colored People—Claiborne County, Mississippi Branch, Nuclear Information Service, Public Citizen, and Mississippi Chapter of the Sierra Club from LBP–04–19 (Tentative).

b. Louisiana Energy Services, L.P. (National Enrichment Facility) (Tentative).

Week of January 24, 2005—Tentative

Monday, January 24, 2005

9:30 a.m., Discussion of Security Issues (Closed—Ex. 1).

1:30 p.m., Discussion of Security Issues (Closed—Ex. 1, 2, 3, & 4).

Tuesday, January 25, 2005

9:30 a.m., Discussion of Security Issues (Closed—Ex. 1).

Week of January 31, 2005—Tentative

Thursday, February 3, 2005

9:30 a.m., Briefing on Human Capital Initiatives (Closed—Ex. 2).

Week of February 7, 2005—Tentative

There are no meetings scheduled for the week of February 7, 2005.

Week of February 14, 2005—Tentative

Tuesday, February 15, 2005

9:30 a.m., Briefing on Office of Nuclear Material Safety and Safeguards Programs, Performance, and Plans—Waste Safety (Public Meeting) (Contact: Jessica Shin, (301) 415–8117).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov*.

1:30 p.m., Briefing on Emergency Preparedness Program Initiatives (Closed—Ex. 1).

Week of February 21, 2005—Tentative

Tuesday, February 22, 2005

9:30 a.m., Briefing on Status of Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans (Public Meeting) (Contact: Patricia Wolfe, (301) 415–6031.

This meeting will be Webcast live at the Web address—*http://www.nrc.gov*.

Wednesday, February 23, 2005

9:30 a.m., Briefing on Status of Office of the Chief Financial Officer (OCFO) Programs, Performance, and Plans (Public Meeting) (Contact: Edward New, (301) 415–5646.

This meeting will be Webcast live at the Web address—*http://www.nrc.gov*.

Thursday, February 24, 2005

1 p.m., Briefing on Nuclear Fuel Performance (Public Meeting) (Contact: Frank Akstulewicz, (301) 415–1136.

This meeting will be Webcast live at the Web address—*http://www.nrc.gov*.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.*, braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at (301) 415–7080, TDD: (301) 415–2100, or by e-mail at *aks@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969. In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: January 13, 2005.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 05–1087 Filed 1–14–05; 9:47 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51012; File No. SR–CTA/CQ–2004–01]

Consolidated Tape Association; Notice of Filing of the Seventh Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan and the Fifth Substantive Amendment to the Restated Consolidated Quotation Plan

January 10, 2005.

Pursuant to Rule 11Aa3–2 [1] under the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on December 3, 2004, the Consolidated Tape Association (''CTA'') Plan and Consolidated Quotation (''CQ'') Plan Participants (''Participants'') [2] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposal to amend the CTA and CQ Plans (collectively, the ''Plans''). The proposal represents the 7th substantive amendment made to the Second Restatement of the CTA Plan and the 5th substantive amendment to the Restated CQ Plan, and reflects changes unanimously adopted by the Participants. The proposed amendments would modify the procedures for joining the Plans as a new Participant. In addition, the proposed amendments would perform the ''housekeeping'' function of incorporating into the text of the Plans changes to the corporate names and addresses of some Participants. The Commission is publishing this notice to solicit comments from interested persons on the proposed amendments to the Plans.

I. Description and Purpose of the Amendments

A. Rule 11Aa3–2 [3]

The proposed amendments would modify the procedures pursuant to which a new national securities exchange or new national securities association may join the Plans as a new Participant. More specifically, the proposed amendments would modify the process for determining the fees that a new national securities exchange or a new national securities association must pay in order to join the Plans.

Currently, both Plans require a new entrant to pay the Participants an amount that ''attributes an appropriate value to the assets, both tangible and intangible, that CTA has created and will make available to such new Participant.'' [4] The Plans allow for the Participants to consider one or more of six factors in assessing the appropriate value.[5] The Commission approved the addition of these entry-fee criteria to both Plans in 1993.[6] However, since the criteria were adopted, no entity has joined the Plans. CBOE was the last Participant to join the Plans, having done so in 1991.

In 1999, the Options Price Reporting Authority (''OPRA'') Plan Participants sought to adopt the same criteria adopted by the CTA to determine the appropriate participation fee to join the OPRA Plan.[7] The Commission received negative comments regarding the previously approved factors OPRA proposed to consider in determining the amount of its participation fee. The commenters asserted that the proposed OPRA Plan criteria could create a barrier to entry into the options industry that could harm competition. In response, OPRA modified and adopted new, more objective factors to be considered in determining the appropriate new entrant participation fee.[8] Consequently, in light of the comments received on the current CTA/CQ Plan criteria that OPRA was proposing to adopt, at the October 2001 CTA meeting, a Division of Market Regulation (''Division'') staff member suggested that the CTA consider amending its Plan criteria for determining new entrant fees to conform to the criteria that was more recently adopted by OPRA.

In 2002, The Nasdaq Stock Market, Inc. (''Nasdaq'') and Island ECN expressed interest in joining the Plans and inquired as to the amount of the entry fee. In response, the Participants engaged Deloitte & Touche, asking it to assign a value to each of the six current Plan criteria for determining a new entrant's fee. The Division expressed concerns to the Participants regarding the methodology contemplated by the CTA and Deloitte & Touche because it believed that the methodology contained factors that should not be considered in determining a proper entrance fee for new entrants.[9] The Division further noted that the entrance fee amount the Committee was considering at the time might have an anti-competitive effect on potential new entrants.[10]

In light of the Division's concerns that the current Plan standards do not provide an objective basis for determining entrance fees for new Participants and that the fees should be based solely on objective criteria and costs that could be easily calculated and that could be readily discernable (similar to the methodology currently used for determining such fees in the OPRA Plan),[11] the Participants are proposing new standards for determining a new Participant's entry fee based on the OPRA Plan criteria. The proposed amendments would allow the Participants to consider one or both of the following in determining a new entrant's fee: (1) The portion of costs previously paid by the CTA for the development, expansion and maintenance of CTA's facilities which, under generally accepted accounting principles (''GAAP''), could have been treated as capital expenditures and, if so treated, would have been amortized over the five years preceding the admission of the new Participant (and for this purpose all such capital expenditures shall be deemed to have a five-year amortizable life) [12]; and (2) previous amounts paid by other new

[1] 17 CFR 240.11Aa3–2.

[2] Each Participant executed the proposed amendments. The Participants are the American Stock Exchange LLC (''Amex''); Boston Stock Exchange, Inc. (''BSE''); Chicago Board Options Exchange, Inc. (''CBOE''); Chicago Stock Exchange (''CHX''), Inc.; National Association of Securities Dealers, Inc. (''NASD''); National Stock Exchange (''NSX''); New York Stock Exchange, Inc. (''NYSE''); Pacific Exchange, Inc. (''PCX''); and Philadelphia Stock Exchange, Inc. (''Phlx'').

[3] 17 CFR 240.11Aa3–2.

[4] Section III(c) of the Plans.

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 33319 (December 10, 1993), 58 FR 66040 (December 17, 1993) (File No. S7–27–93).

[7] *See* Securities Exchange Act Release No. 42002 (October 13, 1999), 64 FR 56543 (October 20, 1999) (notice of File No. SR–OPRA–99–01).

[8] *See* Securities Exchange Act Release No. 43697 (December 8, 2000), 65 FR 78518 (December 15, 2000) (order approving File No. SR–OPRA–00–08); see also Securities Exchange Act Release Nos. 43347 (September 26, 2000), 65 FR 59035 (October 3, 2000) (notice of File No. SR–OPRA–00–08); and 42817 (May 24, 2000), 65 FR 35147 (June 1, 2000) (notice of filing and order granting accelerated effectiveness to File No. SR–OPRA–99–01).

[9] *See* letters to William J. Brodsky, Chairman and Chief Executive Officer, CBOE; David Colker, President and Chief Executive Officer, NSX; Philip D. DeFeo, Chairman and Chief Executive Officer, PCX; Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx; Richard Grasso, Chairman and Chief Executive Officer, NYSE; David A. Herron, Chief Executive Officer, CHX; Richard Ketchum, President and Deputy Chairman, Nasdaq; Kenneth L. Leibler, Chairman and Chief Executive Officer, BSE; and Salvatore F. Sadano, Chairman and Chief Executive Officer, Amex, from Annette L. Nazareth, Director, dated March 13, 2003.

[10] *Id.*

[11] *See* letters to Thomas E. Haley, Chairman, CTA, from Annette L. Nazareth, Director, Division, Commission, dated August 3, and November 3, 2004.

[12] The Commission notes that the Participants should only consider tangible assets that are capital expenditures under GAAP in the fee calculation. In addition, the Commission notes that the Participants should not to consider any historical costs of operating the systems prior to the time the new Participant joins the Plans.

Participants to joined the Plans.[13] In addition, the proposed amendments would require the new Participant to reimburse the Plan Processor for the costs that the Processor incurs in modifying CTS and CQS systems to accommodate the new Participant and for an additional capacity costs.[14] Any disagreement among the Participants regarding the fee calculation would be subject to Commission review pursuant to Section 11A(b)(5) of the Act.[15]

Finally, the proposed amendments would perform the ''housekeeping'' function of updating the names and addresses of the Plans'' Participants. In the last few years, the ''Pacific Stock Exchange, Inc.'' has become the ''Pacific Exchange, Inc.,'' the ''American Stock Exchange, Inc.'' has become the ''American Stock Exchange, LLC,'' and the Cincinnati Stock Exchange, Inc.'' has become the ''National Stock Exchange.''

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The Participants have manifested their approval of the proposed amendments to the Plans by means of their execution of the proposed amendments. The proposed amendments would become effective upon Commission approval of the amendments.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

The Participants believe that the proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Participants do not believe that the proposed Plan amendments introduce terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D)[16] of the Act.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Sponsors in Accordance With Plan

Upon the Commission's receipt of executed versions of the proposed amendments by each of the Plans' Participants, each of the Participants shall have approved the proposed amendments in accordance with Section IV(b) of the CTA Plan and Section IV(c) of the CQ Plan.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

See Item I(A) above.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

See Item I(A) above.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 11Aa3–1[17]

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

Not applicable.

G. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Plan amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CTA/CQ–2004–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CTA/CQ–2004–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CTA. 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–CTA/CQ–2004–01 and should be submitted on or before February 9, 2005.

[13] The Commission notes that in considering the amounts that have been paid by other Participants to join the Plans, the Participants should only consider such fees on a ''going forward'' basis, which are determined by the proposed methodology. The Commission further notes that the fee that CBOE paid to join the Plans in 1991 should not be considered because it was not based on the proposed factors and therefore does not constitute a relevant fee for comparison purposes.

[14] The Commission notes that in utilizing this criteria, the Participants should not consider any criteria that would result in a ''double counting'' of costs because the new entrant and other Plan participants are required to individually pay their own costs (*e.g.*, capacity needs).

[15] 15 U.S.C. 78k–1(b)(5).

[16] 15 U.S.C. 78k–1(c)(1)(D).

[17] 17 CFR 240.11Aa3–1.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Petersen,

Assistant Secretary.

[FR Doc. E5–172 Filed 1–18–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26723; 812–13135]

Wachovia Corporation, et al.; Notice of Application and Temporary Order

January 12, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Wachovia Corporation (''Wachovia'')[1] on or about November 12, 2004 by the United States District Court for the District of Columbia (the ''Injunction''), from January 12, 2005 until the Commission takes final action on an application for a permanent order. Applicants also have requested a permanent order.

APPLICANTS: Wachovia, Evergreen Investment Management Co, LLC (''EIMCO''), Evergreen Investment Services, Inc. (''EIS''), First International Advisors, LLC (d/b/a Evergreen International Advisors) (''FIA''), JL Kaplan Associates, LLC (''Kaplan''), SouthTrust Investment Advisors, A Division of SouthTrust Bank (''STIA''), and Tattersall Advisory Group, Inc. (''TAG'') (EIMCO, FIA, Kaplan, STIA and TAG are collectively referred to as the ''Advisers''), and Evergreen Investment Services, Inc. (''EIS'') (the ''Underwriter'' and, together with the Advisers and Wachovia, the ''Applicants'').[2]

FILING DATES: The application was filed on November 5, 2004, and amended on January 5, 2005.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing or further extends the temporary exemption. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 7, 2005, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Mark C. Treanor, Esq., Wachovia Corporation, 301 South College Street, Suite 4000, One Wachovia Center, Charlotte, NC 28288–0013.

FOR FURTHER INFORMATION CONTACT: Janis F. Kerns, Senior Counsel, or Todd F. Kuehl, Branch Chief, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. Wachovia is a holding company that, through its subsidiaries and affiliates, provides banking, investment, financing, advisory, and related products and services on a global basis. Wachovia is the ultimate parent company of the Advisers and Underwriter. Each Adviser is an investment adviser registered under the Investment Advisers Act of 1940 and serves as investment adviser or sub-adviser to certain registered investment companies (''Funds''). The Underwriter is a broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'') that acts as a principal underwriter for certain Funds.

2. On or about November 12, 2004, the United States District Court for the District of Columbia entered the Injunction against Wachovia in a matter brought by the Commission.[3] The Commission alleged in its complaint (''Complaint'') that Legacy Wachovia and First Union Corporation (''First Union'') violated sections 13(a) and 14(a) of the Exchange Act and rules 12b–20, 13a–3 and 14a–9 thereunder.[4] The alleged violations occurred in connection with material factual omissions in a joint proxy statement/prospectus and quarterly reports filed by Legacy Wachovia and First Union in May and June 2001 during the pendency of First Union's offer to purchase Legacy Wachovia. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, Wachovia consented to the entry of the Injunction and the payment of a civil penalty.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that Wachovia is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the Injunction, they became subject to the prohibitions of Section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking temporary and permanent orders exempting them from the disqualification provisions of section

[18] 17 CFR 200.30–3(a)(27).

[1] Wachovia is the surviving entity of the merger between First Union Corporation and the company known as Wachovia Corporation (''Legacy Wachovia'') on September 1, 2001.

[2] Applicants request that any relief granted pursuant to the application also apply to any other company of which Wachovia is or hereafter becomes an affiliated person in the future (included in the term ''Applicants'').

[3] *Securities and Exchange Commission* v. *Wachovia Corporation, et al.*, Civil Action No. 04–1911 (D.D.C. filed Nov. 12, 2004).

[4] *Securities and Exchange Commission* v. *Wachovia Corporation, et al.*, Civil Action No. 04–1910 (D.D.C. filed Nov. 4, 2004).

9(a) of the Act with respect to the Injunction.

On November 12, 2004, the Applicants received a temporary conditional order from the Commission exempting them from section 9(a) of the Act with respect to the Injunction until the Commission takes final action on an application for a permanent order or, if earlier, January 12, 2005 (''Existing Temporary Order'').[5]

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct alleged in the Complaint did not involve any of the Applicants acting in the capacity of investment adviser, subadviser, depositor or principal underwriter for any Fund. Applicants state that none of the current or former officers, directors or employees of the Advisers or the Underwriter who are or were involved in providing investment advisory, subadvisory, or underwriting services to the Funds were involved in the conduct underlying the Injunction.

5. Applicants state that the inability of the Advisers to continue providing advisory or subadvisory services to the Funds, and of the Underwriter from serving as principal underwriter to the Funds, would result in potentially severe hardships for the Funds and their shareholders. Applicants assert that section 9(a) disqualifications would deprive Fund shareholders of the services they selected in investing in the Funds, cause uncertainty by frustrating efforts to effectively manage Fund assets, and could increase the Funds' expense ratios to the detriment of the Funds' shareholders. The Advisers and Underwriter have distributed, or will distribute as soon as reasonably practical, written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds (the ''Boards''), including the directors or trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of such Funds and their independent legal counsel as defined in rule 0–1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. Applicants will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. The Advisers and Underwriter also state that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. The Advisers and Underwriter state that they have committed substantial resources to establish an expertise in advising, subadvising, and distributing the Funds. The Advisers and Underwriter state that prohibiting them from providing advisory and distribution services to the Funds would adversely affect not only the viability of their businesses, but also the livelihoods of the hundreds of employees of the Advisers and Underwriter. Applicants state that they have not received any orders under section 9(c) of the Act in the past.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

> Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application, or the revocation or removal of any temporary exemptions granted in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that Applicants are granted a temporary exemption from the provisions of section 9(a) of the Act, solely with respect to the Injunction, subject to the condition in the application, from January 12, 2005 until the Commission takes final action on the application for a permanent order.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–175 Filed 1–18–05; 8:45 am]

BILLING CODE 8010–01–P

[5] Investment Company Act Release No. 26654 (Nov. 12, 2004)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51026; File No. SR–EMCC–2005–01]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Establish Procedures for Exiting Open Fail Positions Prior to Dissolution

January 12, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 5, 2005, the Emerging Markets Clearing Corporation (''EMCC'') 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 primarily by EMCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes a cut-off date for processing securities transactions and implements procedures for EMCC to exit open fail positions prior to its dissolution.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC 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. EMCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

At EMCC's October 27, 2004, Board of Directors (''Board'') meeting, the Board authorized EMCC's dissolution and deregistration as a clearing agency effective no later than March 31, 2005. In order to accomplish this, EMCC has

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

set a cut-off date of February 18, 2005,[3] for the input of transactions.[4] While EMCC management expects that all trades submitted to it by February 15, 2005, will settle promptly, it is possible that some trades may not settle timely. Accordingly, EMCC is establishing February 23, 2005, as EMCC's final settlement date. This means that EMCC will exit from any trades that remain open as of February 23, 2005. Under revised Rule 3, Section 1 of EMCC's rules, EMCC will issue deliver and receive instructions to the original buyers and sellers for any trades that have not settled by February 23, 2005. The legal obligations of those parties will continue to be subject to EMCC's rules even though such trades will no longer settle pursuant to EMCC's rules. To the extent that EMCC discontinues processing before the end of February 2005, EMCC will prorate its members' February charges and will reflect any proration on the members' final bill.

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it will enable EMCC to process its final transactions in an orderly manner thereby promoting the prompt and accurate clearance and settlement of securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received by EMCC. EMCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that EMCC's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F)[6] of the Act. Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The proposed rule change will enable EMCC to process its final transactions in an orderly and transparent manner thereby promoting the prompt and accurate clearance and settlement of securities.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will afford EMCC sufficient time to give its members notice of its decision to cease operations and to wind down its clearing agency operations in an orderly fashion.

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–EMCC–2005–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–EMCC–2005–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at EMCC's principal office and on EMCC's Web site at <*http://www.e-m-c-c. com/legal/*>. 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–EMCC–2005–01 and should be submitted on or before February 9, 2005.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–EMCC–2005–01) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–171 Filed 1–18–05; 8:45 am]

BILLING CODE 8010–01–P

[3] Telephone conversation between Karen Saperstein, General Counsel and Secretary, EMCC, and Jerry Carpenter, Assistant Director of Market Regulation, Commission (January 12, 2005).

[4] While EMCC expects that the dates set forth in this filing will be used, EMCC reserves the right to postpone these dates if, in its sole discretion, circumstances warrant. In the event EMCC postpones these dates, it will provide notice to the Commission and to its members.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51020; File No. SR–MSRB–2005–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Interpretive Reminder Notice Regarding Rule G–17, on Disclosure of Material Facts—Disclosure of Original Issue Discount Bonds

January 11, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 5, 2005, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') 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 prepared by the MSRB. The MSRB has designated this proposal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the MSRB under Section 19(b)(3)(A)(i) of the Act [3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission an interpretive reminder notice regarding Rule G–17, on disclosure of material facts—disclosure of original issue discount bonds. The text of the notice follows, with *italics* indicating new language:

* * * * *

Reminder Notice Regarding Rule G–17, on Disclosure of Material Facts—Disclosure of Original Issue Discount Bonds

The MSRB is publishing this notice to remind dealers of their affirmative disclosure obligations when effecting transactions with customers in original issue discount bonds. An original issue discount bond, or O.I.D. bond, is a bond that was sold at the time of issue at a price that included an original issue discount. The original issue discount is the amount by which the par value of the bond exceeded its public offering price at the time of its original issuance. The original issue discount is amortized over the life of the security and, on a municipal security, is generally treated as tax-exempt interest. When the investor sells the security before maturity, any profit realized on such sale is calculated (for tax purposes) on the adjusted book value, which is calculated for each year the security is outstanding by adding the accretion value to the original offering price. The amount of the accretion value (and the existence and total amount of original issue discount) is determined in accordance with the provisions of the Internal Revenue Code and the rules and regulations of the Internal Revenue Service.[1]

Rule G–17, the MSRB's fair dealing rule, encompasses two general principles. First, the rule imposes a duty on dealers not to engage in deceptive, dishonest, or unfair practices. This first prong of Rule G–17 is essentially an antifraud prohibition. In addition to the basic antifraud provisions in the rule, the rule imposes a duty to deal fairly with all persons. As part of a dealer's obligation to deal fairly, the MSRB has interpreted the rule to create affirmative disclosure obligations for dealers. The MSRB has stated that the dealer's affirmative disclosure obligations require that a dealer disclose, at or before the sale of municipal securities to a customer, all material facts concerning the transaction, including a complete description of the security.[2] These obligations apply even when a dealer is effecting non-recommended secondary market transactions.

In the context of the sale to customers of an original issue discount security, the MSRB's customer confirmation rule, Rule G–15(a), provides that information regarding the status of bonds as original issue discount securities must be included on customer confirmations. Specifically, Rule G–15(a)(i)(C)(4)(c) provides that, ''If the securities pay periodic interest and are sold by the underwriter as original issue discount securities, a designation that they are ''original issue discount'' securities and a statement of the initial public offering price of the securities, expressed as a dollar price'' must be included on the customer's confirmation.

The MSRB previously has alerted dealers of their obligation to make original issue discount disclosures to customers and has stated that, ''The Board believes that the fact that a security bears an original issue discount is material information (since it may affect the tax treatment of the security); therefore, this fact should be disclosed to a customer prior to or at the time of trade.''[3] The MSRB is publishing this notice to remind dealers of their disclosure obligations under Rule G–17 because it remains concerned that, absent adequate disclosure of a security's original issue discount status, an investor might not be aware that all or a portion of the component of his or her investment return represented by accretion of the discount is tax-exempt, and therefore might sell the securities at an inappropriately low price (i.e., at a price not reflecting the tax-exempt portion of the discount) or pay capital gains tax on the accreted discount amount. Without appropriate disclosure, an investor also might not be aware of how his or her transaction price compares to the initial public offering price of the security. Appropriate disclosure of a security's original issue discount feature should assist customers in computing the market discount or premium on their transaction.

* * * * *

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 MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The MSRB 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 MSRB is publishing the proposed rule change to remind dealers of their affirmative disclosure obligations when effecting transactions with customers in original issue discount bonds.

The MSRB previously has alerted dealers of their obligation to make original issue discount disclosures to customers and has stated that, ''The Board believes that the fact that a security bears an original issue discount is material information (since it may affect the tax treatment of the security); therefore, this fact should be disclosed to a customer prior to or at the time of trade.''[5] The MSRB is publishing this notice to remind dealers of their disclosure obligations under Rule G–17 because it remains concerned that, absent adequate disclosure of a security's original issue discount status, an investor might not be aware that all or a portion of the component of his or her investment return represented by accretion of the discount is tax-exempt, and therefore might sell the securities at an inappropriately low price (*i.e.*, at a price not reflecting the tax-exempt portion of the discount) or pay capital gains tax on the accreted discount amount. Without appropriate disclosure, an investor also might not be

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[1] *See Glossary of Municipal Securities Terms, Second Edition (January 2004).*

[2] *See e.g., Rule G–17 Interpretation—Educational Notice on Bonds Subject to ''Detachable'' Call Features, May 13, 1993, MSRB Rule Book (July 2004) at 135.*

[3] *Rules G–12 and G–15, Comments Requested on Draft Amendments on Original Issue Discount Securities, MSRB Reports, Vol. 4, No. 6 (May 1994) at 7.*

[5] Rules G–12 and G–15, Comments Requested on Draft Amendments on Original Issue Discount Securities, *MSRB Reports,* Vol. 4, No. 6 (May 1994) at 7.

aware of how his or her transaction price compares to the initial public offering price of the security. Appropriate disclosure of a security's original issue discount feature should assist customers in computing the market discount or premium on their transaction.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,[6] which authorizes the MSRB to adopt rules that shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB has always interpreted its Rule G–17, on fair dealing, to encompass two general principles. First, the rule imposes a duty on dealers not to engage in deceptive, dishonest, or unfair practices. In addition to the basic antifraud provisions in the rule, the rule imposes a duty to deal fairly with all persons. As part of a dealer's obligation to deal fairly, the MSRB has interpreted the rule to create affirmative disclosure obligations for dealers. The proposed rule change will further the purposes of Section 15B(b)(2)(C) by reminding dealers of their obligations to deal fairly with customers and affirmatively disclose, at or before the sale of municipal securities to a customer, all material facts concerning the transaction including a security's original issue discount feature.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition among dealers not necessary or appropriate in furtherance of the purposes of the Act because it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

[6] 15 U.S.C. 78o–4(b)(2)(C).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The MSRB has designated this proposed rule change as constituting a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing MSRB rule under Section 19(b)(3)(A)(i) of the Act,[7] and Rule 19b–4(f)(1) thereunder,[8] which renders the proposed rule change effective upon filing with the Commission.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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–MSRB–2005–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–MSRB–2005–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the office of the MSRB. 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–MSRB–2005–01 and should be submitted on or before February 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–174 Filed 1–18–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4.

[9] *See* 15 U.S.C. 78s(b)(3)(C).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51025; File No. SR–NASD–2005–01]

Self-Regulatory Organizations; Notice of a Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Changes to Rule 3360 in Light of the SEC Regulation SHO

January 11, 2005.

Pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 7, 2005, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. NASD has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(3).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rule 3360 to change references from ''SEC Rule 3b–3'' to ''SEC Rule 200,'' thereby conforming the rule language in Rule 3360 in light of the SEC's new short sale regulation, Regulation SHO. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

3360. Short-Interest Reporting

(a) No change.

(b) For purposes of this Rule, ''short'' positions to be reported are those resulting from ''short sales'' as that term is defined in SEC Rule *200*[3b–3,] of Regulation SHO, with the exception of positions that meet the requirements of Subsections (e)(1), (6), (7), (8), [(9),] and (10) of SEC Rule 10a–1 adopted under the Act.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 23, 2004, the SEC adopted certain provisions of a new short sale regulation, designated Regulation SHO (Reg SHO).[4] Reg SHO includes, among other provisions, a new SEC Rule 200, which among other things, incorporates SEC Rule 3b–3 under the Act with some modifications to define ownership and aggregation of securities positions, and includes a requirement to mark all sell orders in all equity securities. SEC Rule 3b–3 was repealed and reserved. The compliance date for SEC Rule 200 of Reg SHO was January 3, 2005.

Given that SEC Rule 3b–3 is now incorporated in the new SEC Rule 200 established by Reg SHO, NASD is proposing to amend Rule 3360 to replace the reference to ''SEC Rule 3b–3'' with ''SEC Rule 200,'' thereby conforming the rule language in Rule 3360 in light of Reg SHO. NASD has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing, January 7, 2005.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that conforming references in Rule 3360 to new SEC Rule 200 in recently adopted Reg SHO will more easily identify the appropriate definitions of ''short sales.''

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. NASD requests that the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b–4(f)(6)(iii).[6] NASD believes good cause exists to grant such waivers because of the importance of short sale regulation to the protection of investors and the fact that the pilot programs will each expire if not extended. NASD will implement this rule change immediately.

The Commission believes that waiving the 5-day notice and 30-day pre-operative delay is consistent with the protection of investors and the public interest. The Commission believes that accelerating the operative date does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

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–2005–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2005–001. 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

[4] *See* Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004).

[5] 15 U.S.C. 78o–3(b)(6)(A).

[6] Under subparagraph (f)6)(iii) of Rule 19b–4, 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. 17 CFR 240.19b–4(f)(6)(iii).

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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2005–001 and should be submitted on or before February 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–173 Filed 1–18–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51023; File No. SR–NASD–2004–174]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Frequency of Updates From the National Do-Not-Call Registry

January 11, 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 24, 2004 the National Association of Securities Dealers, Inc. (''NASD'') 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 prepared by NASD. On January 6, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change 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

NASD is proposing to amend NASD Rule 2212, to require a member that seeks to qualify for the safe harbor set forth in NASD Rule 2212 to, among other things, use a process to prevent telephone solicitations to any telephone number in a version of the national do-not-call registry obtained from the administrator of the registry no more than thirty-one (31) days prior to the date any call is made. This proposed amendment is consistent with recent amendments to the comparable do-not-call rules of the Federal Trade Commission (''FTC'') and the Federal Communications Commission (''FCC''). Below is the text of the proposed rule change. Proposed new language is in *italics.* Proposed deletions are in [brackets].

2200. Communications With Customers and the Public

2210. Communications with the Public

* * * * *

2212. Telemarketing

(a) No Change.
(b) No Change.
(c) Safe Harbor Provision.
(1)–(3) No Change.
(4) Accessing the national do-not-call database. The member uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than [three months] *thirty-one (31) days* prior to the date any call is made, and maintains records documenting this process.
(d)–(g) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2003, the FTC, via its Telemarketing Sales Rule, and the FCC, via its Miscellaneous Rules Relating to Common Carriers, established requirements for sellers and telemarketers to participate in a national do-not-call registry.[4] Since June 2003, consumers have been able to enter their home telephone numbers into the national do-not-call registry, which is maintained by the FTC. Under rules of the FTC and FCC, sellers and telemarketers generally are prohibited from making telephone solicitations to consumers whose numbers are listed in the national do-not-call registry. The FCC's do-not-call rules apply to broker-dealers while the FTC's rules do not.[5]

In July 2003, the SEC requested that NASD amend its telemarketing rules to require NASD members to participate in the national do-not-call registry.[6] Because broker-dealers are subject to the FCC's do-not-call rules, NASD modeled its rules in this area after those of the FCC and codified these do-not-call requirements in NASD Rule 2212, with minor modifications tailoring the rules to broker-dealer activities and the securities industry. The SEC approved these rules in January 2004.[7]

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NASD filed a partial amendment to request that the Commission approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (''Act''). The partial amendment also changes the effective date of the proposed rule change from January 1, 2005 to March 1, 2005.

[4] The do-not-call rules of the FCC and FTC are very similar in terms of substance, in part, because Congress directed the FCC to consult with the FTC to maximize consistency between their respective do-not-call rules. *See* The Do-Not-Call Implementation Act, 108 Public Law 10, 117 Stat. 557 (March 11, 2003).

[5] *See* 15 U.S.C. 6102(d)(2)(A), which provides that ''The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to * * * [among other persons, brokers or dealers] * * *. .'' The FTC's do-not-call rules were promulgated under 15 U.S.C. 6102. The FCC's rules are not subject to this limitation and apply to all sellers and telemarketers. *See* NASD *Notice to Members* 04–15 for a more extensive discussion of the concurrent application of FCC and NASD rules in this area.

[6] The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 (codified at 15 U.S.C. 6102) requires the SEC to promulgate telemarketing rules substantially similar to those of the FTC or to direct self-regulatory organizations to promulgate such rules unless the SEC determines that such rules are not in the interest of investor protection.

[7] *See* Securities Exchange Act Release No. 49055 (January 12, 2004); 69 FR 2801 (January 20, 2004) (SR-NASD–2003–131).

Safe Harbor Provision for the National Do-Not-Call Registry Requirements

The FCC and FTC each provided persons subject to their respective do-not-call rules a ''safe harbor'' providing that a seller or telemarketer is not liable for a violation of the do-not-call rules that is the result of an error if the seller or telemarketer's routine business practice meets certain specified standards. NASD has provided a parallel safe harbor in paragraph (c) of NASD Rule 2212; this safe harbor is limited to a violation of subparagraph (a)(3) of NASD Rule 2212, which prohibits initiating any telephone solicitation to any person who has registered his or her phone number with the national do-not-call registry.

Today, to be eligible for this NASD Rule 2212 safe harbor, a member or person associated with a member must demonstrate that the member's routine business practice meets four standards. First, the member must have established and implemented written procedures to comply with the national do-not-call rules. Second, the member must have trained its personnel, and any entity assisting it in its compliance, in procedures established pursuant to the national do-not-call rules. Third, the member must have maintained and recorded a list of telephone numbers that the member may not contact. Fourth, the member must use a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the FTC no more than *three months* prior to the date any call is made, and must maintain records documenting this process.

Shortly after NASD's rules were approved, Congress instructed the FTC to amend its telemarketing rules to require use of a national do-not-call registry no more than thirty-one days old.[8] Accordingly, in March 2004, the FTC amended its Telemarketing Sales Rule to require sellers and telemarketers seeking to qualify for the FTC's do-not-call safe harbor to use a version of the national do-not-call registry obtained from the FTC no more than thirty-one days prior to the date any call is made. In August 2004, the FCC adopted a conforming amendment to its Miscellaneous Rules Relating to Common Carriers, requiring that persons who seek to qualify for a similar safe harbor provided in the rule use a version of the national do-not-call registry obtained from the administrator of the national do-not-call registry (*i.e.*, the FTC) no more than thirty-one days prior to the date any call is made.[9] The FTC and FCC rule amendments take effect on January 1, 2005.

NASD is proposing to amend NASD Rule 2212 to conform to this change in the rules of the FTC and FCC. NASD believes that this change is necessary to maintain the consistency between the telemarketing rules of NASD and the FTC and FCC (particularly given that the FCC's rules already directly apply to broker-dealers), and that investors generally expect NASD's telemarketing standards to be comparable to those of the FTC and FCC. Additionally, under The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 the SEC has requested that NASD amend its do-not-call rules to conform to the recent amendments to the FTC's do-not-call rules.

NASD's proposed rule change would take effect on March 1, 2005. Accordingly, under the proposed rule change, effective March 1, 2005, an NASD member seeking to qualify for the safe harbor in NASD Rule 2212 would be required to use a process to prevent telephone solicitations to any telephone number in a version of the national do-not-call registry obtained from the administrator of the registry (*i.e.*, the FTC) no more than *thirty-one days* prior to the date any call is made.

NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 30 days following Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[10] in general, and with Section 15A(b)(6) of the Act,[11] in particular, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will increase the protection of investors by enabling investors who do not want to receive telephone solicitations to receive the benefits and protections of the national do-not-call registry sooner.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. 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–NASD–2004–174 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–174. 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

[8] The FTC indicated that it was directed to amend its rules by Congress in the Consolidated Appropriations Act of 2004, Public Law 108–199, 188 Stat 3 (requirement in Division B, Title V). *See* The Telemarketing Sales Rule—Part III, 69 FR 16368 (March 29, 2004).

[9] *See* 69 FR 60311 (October 8, 2004); CG Docket No. 02–278, FCC 04–204 (adopted August 25, 2004; released September 21, 2004). The FCC indicated that while Congress did not direct the FCC to amend its do-not-call rule, it determined to do so, in part, because it is required to consult and coordinate with the FTC with respect to, and maximize the consistency of, their respective do-not-call rules. *See* 69 FR 60313.

[10] 15 U.S.C. 78o–3.

[11] 15 U.S.C. 78o–3(b)(6).

available for inspection and copying at the principal offices of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–174 and should be submitted on or before February 9, 2005.

IV. Commission's Finding and Order Granting Accelerated Approval of Proposed Rule Changes

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder. After careful review the Commission finds that the proposed rule change is consistent with the requirements of Section 15A(b)(6) of the Act [12] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[13] Specifically, the proposed rule change will make the NASD rules consistent with the telemarketing rules of the FTC and FCC, and lessens the possibility of any confusion about a broker-dealer's responsibility to use the national do-not-call registry.

Based on the above, the Commission believes that there is good cause, consistent with Section 15A(b)(6) [14] and Section 19(b)(2) of the Act [15] to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NASD–2004–174) is hereby approved on an accelerated basis.

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78*o*–3(b)(6).

[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–177 Filed 1–18–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51033; File No. SR–NSX–2004–12]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change by the National Stock Exchange To Eliminate the ''CBOE Exerciser Member'' Membership Class, To Eliminate the Exchange's Special Nominating Committee, and To Remove Certain Special Restrictions on Changes to Certain NSX By-Laws and Rules

January 13, 2005.

I. Introduction

On October 21, 2004, the National Stock Exchange (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its by-laws and rules in order to eliminate the ''CBOE Exerciser Member'' membership class, to eliminate NSX's Special Nominating Committee, and to remove certain special restrictions on making changes to various NSX by-laws and rules. Notice of the proposed rule change was published for comment in the **Federal Register** on December 10, 2004.[3] No comments were received regarding the proposal. This order approves the proposed rule change.

II. Background

On November 14, 1986, the Cincinnati Stock Exchange (''CSE''), now known as the NSX, and CBOE entered into an agreement of affiliation pursuant to which CBOE currently holds 162 certificates of proprietary membership of NSX and CBOE and its members have certain rights associated with NSX. The rights CBOE gained as a result of the affiliation include the right for CBOE members to become Proprietary Members of NSX without having to purchase or own certificates of proprietary membership, provided that each such CBOE member meets all other eligibility requirements for NSX membership (such CBOE members are referred to as ''Proprietary Members without certificates'' or ''CBOE Exerciser Members''). CBOE also gained the right to hold six out of the thirteen seats on the NSX's Board of Directors and the right to hold three of the six seats on the newly created Special Nominating Committee, which is tasked with nominating the Public Directors to the NSX board. Furthermore, as part of the agreement of affiliation, the NSX agreed to adopt special restrictions on amending certain provisions of the NSX by-laws and rules. These terms of the agreement of affiliation were implemented through changes to NSX's by-laws and rules.[4]

NSX and CBOE recently agreed to amend and terminate certain aspects of their affiliation and entered into a termination of rights agreement on September 27, 2004 (''Termination Agreement''). Under the Termination Agreement, CBOE agreed to transfer certain of its certificates of proprietary membership to NSX and to relinquish certain rights associated with NSX in exchange for certain cash payments and other undertakings by NSX, subject to the terms and conditions set forth in the Termination Agreement. The initial closing for the Termination Agreement is conditioned upon Commission approval of the amendments to the NSX by-laws and rules contained in this proposed rule change.

III. Description of the Proposal

Under the proposal, NSX would eliminate the CBOE Exerciser Member membership class and the related special privilege for CBOE members to become NSX members without purchasing certificates of proprietary membership. In eliminating this class of membership and this special privilege, the Exchange would provide a transition period whereby all CBOE Exerciser Members would have ninety days from the date of the approval of this proposed rule change to purchase certificates of proprietary membership from NSX. During such ninety day period, a CBOE Exerciser Member who has not purchased a certificate of propriety membership would continue to have the rights and obligations of a Proprietary Member without certificate as those rights and obligations existed prior to

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50796 (December 6, 2004), 69 FR 32639.

[4] *See* Securities Exchange Act Release Nos. 23868 (December 9, 1986), 51 FR 44958 (December 15, 1986) (notice of proposed changes to CSE by-laws and rules to implement agreement of affiliation) and 24090 (February 12, 1987), 52 FR 5225 (February 19, 1987) (order approving changes to CSE by-laws and rules to implement agreement of affiliation).

the date of approval of this proposal. At the conclusion of the ninety day period, however, any CBOE Exerciser Member who does not own an NSX certificate of proprietary membership would automatically cease to qualify for membership on the Exchange and would not become a member of the Exchange again without first complying with all the procedures and requirements set forth in the NSX by-laws and rules to do so. In relation to the elimination of the membership class of CBOE Exerciser Members, NSX would also eliminate the ''CBOE Exercise Application'' fee and other references in its by-laws to ''Proprietary Members without certificates.''

In addition, the proposal would eliminate NSX's Special Nominating Committee, which is composed of two Designated Dealer Directors, the At-Large Director and three of the six CBOE Directors and which has the responsibility of nominating candidates for Public Director positions on the NSX board. NSX proposes to re-assign the responsibility of nominating Public Directors to the NSX's Nominating Committee, which currently nominates candidates for the Designated Dealer Director and At-Large Director board positions. Finally, the proposal would eliminate the special limitations on changes to certain NSX by-laws and rules contained in Article XII of the NSX by-laws.

IV. Discussion

The Commission has reviewed the proposed rule change and finds that it is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] Specifically, the Commission finds that the proposed rule change furthers the objectives of Section 6(b)(1)[6] of the Act, which requires the Exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the Act and the rules of the Exchange. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that NSX and CBOE have recently agreed to the Termination Agreement, which would amend and terminate certain aspects of their affiliation. The Commission also notes that NSX seeks to eliminate provisions of its by-laws and rules that were adopted to implement the terms of the original agreement of affiliation between NSX and CBOE.[8] In particular, the Commission notes that the proposal would eliminate the CBOE Exerciser membership class. Under the proposal, the removal of the CBOE Exerciser membership class would be deferred until the conclusion of a ninety-day transition period. The Commission believes that ninety days should be a reasonable period of time for interested CBOE members to purchase the requisite certificates of proprietary membership. In addition, the Commission notes that the proposal would remove special voting limitations on changes to its by-laws, and amend the provisions of its by-laws regarding the Special Nominating Committee. The Commission believes that these provisions are no longer necessary as a result of the amendments to NSX's affiliation with CBOE under the Termination Agreement.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Sections 6(b)(1)[9] and 6(b)(5)[10] of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–NSX–2004–12) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

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[5] 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).

[6] 15 U.S.C. 78f(b)(1).

[7] 15 U.S.C. 78f(b)(5).

[8] *See supra* note 4.

[9] 15 U.S.C. 78f(b)(1).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51022; File No. SR–PCX–2005–04]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Electronic Order Capture System or Electronic Tablet Entry Requirements

January 11, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 10, 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 PCX. The Exchange has filed the proposal as a ''non-controversial'' 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.[5] 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 PCX proposes to amend PCX Rule 6.67 to allow for an exception to the Electronic Order Capture System (''EOC'') or Electronic Tablet Entry Requirement for any option order on the Standard and Poor's Depository Receipts (''SPY'') until March 28, 2005. The text of the proposed rule change is below. Proposed new language is in *italics*.

Rules of the Pacific Exchange, Inc., Rule 6

Order Format and System Entry Requirements

Rule 6.67(a)–(c)—No Change.

Rule 6.67(d)(1)—Exceptions to EOC or Electronic Tablet Entry Requirement. The EOC or Electronic Tablet entry requirement provision of subsection (c) will not apply to the following:

(A) Any EOC or Electronic Tablet system disruption or malfunction as confirmed by two Trading Officials or

[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] The PCX asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

Exchange staff (as designated by the Chief Regulatory Officer).

(B) Any orders in Standard and Poor's Depository Receipts ("SPY") until March 28, 2005. Rule 6.67(d)(2)–(e)—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, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to adopt a provision that exempts option orders for SPY from the requirements of EOC or Electronic Tablet Entry Requirement as set forth in PCX Rule 6.67 until March 28, 2005. This exemption is similar to an exemption provided by the Chicago Board Options Exchange ("CBOE") rules.[6] The PCX is adopting this exemption for competitive purposes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it 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 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 comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change immediately operative.

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.[12] The Commission notes that by waiving the pre-filing requirement and accelerating the operative date, the Exchange has stated that it will allow for a more efficient and effective market operation by enabling the Exchange to provide a competitive means of trading SPY options. For these reasons, the Commission designates that the proposed rule change has become effective and operative immediately.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2005–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2005–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–04 and should be submitted on or before February 9, 2005.

[6] *See* Securities Exchange Act Release No. 51006 (January 10, 2005) (CBOE–2005–04).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes 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).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–178 Filed 1–18–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51024; File No. SR-Phlx-2004-94]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Increasing the Firm-Related Equity Option and Index Option Comparison and Transaction Cap

January 11, 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 December 28, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. Phlx filed this proposal pursuant to Section 19(b)(3)(A)(ii)[3] of the Act and Rule 19b–4(f)(2)[4] thereunder as a proposal establishing or changing a due, fee, or other charge imposed by the self-regulatory organization, 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

Phlx proposes to amend its schedule of fees to increase the current cap of $50,000 per month per member organization to $60,000, to be imposed on all ''firm-related'' equity option and index option comparison and transaction charges combined.

This proposal is scheduled to become effective for transactions settling on or after January 3, 2005. The text of the proposed rule change is available at Phlx and at the Commission.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for its 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. 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

Currently, the Exchange imposes a cap of $50,000 per member organization on all ''firm-related'' equity option and index option comparison and transaction charges combined.[5] Specifically, ''firm-related'' charges include equity option firm/proprietary comparison charges, equity option firm/proprietary transaction charges, equity option firm/proprietary facilitation transaction charges, index option firm (proprietary and customer executions) comparison charges, index option firm/proprietary transaction charges, and index option firm/proprietary facilitation transaction charges (collectively ''firm-related charges''). Thus, such firm-related charges for equity options and index options, in the aggregate for one billing month, may not exceed $50,000 per month per member organization. Certain options are not subject to the cap.[6]

Pursuant to this proposal, the cap would increase from $50,000 to $60,000. No other changes to the firm-related equity option and index option cap are being proposed at this time.

The purpose of the proposed rule change is to raise revenue, while continuing to promote equity option and index option business on the Phlx. Specifically, the Exchange believes that imposing a cap of $60,000 (rather than $50,000) will continue to offer an incentive for member organizations to transact more volume on the Phlx floor. An increase in firm orders should provide more trading opportunities for floor members, thereby increasing revenue potential to the membership, in addition to increasing revenue to the Exchange. Because the $50,000 cap was established over one year ago,[7] the Exchange believes that it is now appropriate to raise it by $10,000.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is an equitable allocation of reasonable fees among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2)[11] thereunder as a proposal establishing or changing a due, fee, or other charge imposed by the self-regulatory organization. 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

[5] The firm/proprietary comparison or transaction charge applies to member organizations for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customers. Member organizations will be required to verify this amount to the Exchange by certifying that they have reached this threshold by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles (''GAAP''). In the event that a member organization has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, will be accepted. *See* Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000) (SR–Phlx–00–85).

[6] Variable (not fixed) firm-related charges are imposed on the following three options: Full-size index options (''QCX'') and Mini index options (''QCE'') on the Nasdaq Composite Index, Inc.® and options listed on the iShares FTSE/Xinhua China 25 Index Fund (''FXI Options''), an exchange-traded fund. In addition, certain license fees per contract side may be imposed after the $50,000 cap is reached. *See* Securities Exchange Act Release No. 50836 (December 10, 2004), 69 FR 75584 (December 17, 2004) (SR-Phlx-2004-70).

[7] *See* Securities Exchange Act Release No. 48459 (September 8, 2003), 68 FR 54034 (September 15, 2003) (SR-Phlx-2003-61).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

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-Phlx-2004-94 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR-Phlx-2004-94. 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 Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2004-94 and should be submitted on or before February 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–176 Filed 1–18–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51028; File No. SR-Phlx-2005-04]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Electronic Audit Trail for Orders in Options Overlying the Standard and Poor's Depositary Receipts

January 12, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 11, 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 Exchange has filed the proposal as a ''non-controversial'' 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.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rule 1063, Responsibilities of Floor Brokers, and Option Floor Procedure Advice (''OFPA'') C–2, Options Floor Broker Management System (''FBMS''), to extend the date on which Floor Brokers would be required to create an electronic audit trail for non-electronic orders in options overlying the Standard and Poor's Depositary Receipts (''SPDRs'') until March 28, 2005. The text of the proposed rule change is below. Proposed new language is in *italics.*

Responsibilities of Floor Brokers

Rule 1063. (a)–(d)—No change.

(e)*(i)* Options Floor Broker Management System. In order to create an electronic audit trail for options orders represented by Floor Brokers on the Exchange's Options Floor, a Floor Broker or such Floor Broker's employees shall, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker onto the electronic Options Floor Broker Management System (as described in Rule 1080, Commentary .06). The following specific information with respect to orders represented by a Floor Broker shall be recorded by such Floor Broker or such Floor Broker's employees: (i) the order type (i.e., customer, firm, broker-dealer); (ii) the option symbol; (iii) buy, sell, or cancel; (iv) call, put, complex (i.e., spread, straddle), or contingency order as described in Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a complex order, net debit or credit, if applicable; (vii) whether the transaction is to open or close a position; and (viii) The Options Clearing Corporation (''OCC'') clearing number of the broker-dealer that submitted the order (collectively, the ''required information''). Upon the execution of such an order, the Floor Broker shall enter the time of execution of the trade. Floor Brokers or their employees shall enter clearing information onto the Options Floor Broker Management System no later than five minutes after the execution of a trade. In the event of a malfunction in the Options Floor Broker Management System, Floor Brokers shall record the required information on trade tickets, and shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets shall be time stamped upon the execution of such an order. Floor Brokers or their employees shall enter the required information that is recorded on such trade tickets into AUTOM for inclusion in the electronic audit trail.

(ii) Orders in Options Overlying Standard and Poor's Depositary Receipts (''SPDRs''). The requirements of sub-paragraph (e)(i) above shall apply to options overlying SPDRs beginning on March 28, 2005.

(f) No change.

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[12] 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).

[5] The Phlx asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

C–2 Options Floor Broker Management System

Options Floor Broker Management System. In order to create an electronic audit trail for options orders represented by Floor Brokers on the Exchange's Options Floor, a Floor Broker or such Floor Broker's employees shall, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker onto the electronic Options Floor Broker Management System (as described in Rule 1080, Commentary .06). The following specific information with respect to orders represented by a Floor Broker shall be recorded by such Floor Broker or such Floor Broker's employees: (i) the order type (i.e., customer, firm, broker-dealer); (ii) the option symbol; (iii) buy, sell, or cancel; (iv) call, put, complex (i.e., spread, straddle), or contingency order as described in Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a complex order, net debit or credit, if applicable; (vii) whether the transaction is to open or close a position; and (viii) The Options Clearing Corporation (''OCC'') clearing number of the broker-dealer that submitted the order (collectively, the ''required information''). Upon the execution of such an order, the Floor Broker shall enter the time of execution of the trade. Floor Brokers or their employees shall enter clearing information onto the Options Floor Broker Management System no later than five minutes after the execution of a trade. In the event of a malfunction in the Options Floor Broker Management System, Floor Brokers shall record the required information on trade tickets, and shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets shall be time stamped upon the execution of such an order. Floor Brokers or their employees shall enter the required information that is recorded on such trade tickets into AUTOM for inclusion in the electronic audit trail.

Floor Brokers or their employees shall enter the required information (as described above) for FLEX and foreign currency options, including customized foreign currency options, or ensure that such information is entered, into the Exchange's electronic audit trail in the same electronic format as the required information for equity and index options. Floor Brokers or their employees shall enter the required information for FLEX and foreign currency options, including customized foreign currency options, into the electronic audit trail on the same business day that a specific event surrounding the lifecycle of an order in FLEX and foreign currency options, including customized foreign currency options (including, without limitation, orders, price or size changes, execution or cancellation) occurs.

Orders in Options Overlying Standard and Poor's Depositary Receipts (''SPDRs''). The requirements of this Advice shall apply to options overlying SPDRs beginning on March 28, 2005.

FINE SCHEDULE No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Phlx Rule 1063(e) and OFPA C–2 to reflect that the requirement that Floor Brokers create an electronic audit trail for non-electronic orders in options overlying SPDRs will commence on March 28, 2005.

The Commission recently approved, on a permanent basis, amendments to Phlx Rule 1063 and OFPA C–2 to require that, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, Floor Brokers must record all options orders represented by such Floor Broker onto the electronic Options Floor Broker Management System.[6]

The requirements of Phlx Rule 1063(e) and OFPA C–2 that Floor Brokers record the ''required information'' as defined therein commenced on January 10, 2005. Options overlying SPDRs began trading on the Exchange on January 10, 2005. The Exchange believes that the extension of the date for compliance with the electronic audit trail requirements for non-electronic orders in options overlying SPDRs until March 28, 2005 is reasonable and appropriate, because the manner in which these options trade, and the trading environment that exists in these options, is significantly different than that of equity options, and since options overlying SPDRs only very recently began trading on the Exchange, as described above.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5)[8] of the Act in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade, by requiring Exchange Floor Brokers to incorporate non-electronic orders in options overlying SPDRs while reasonably extending such requirement until March 28, 2005 respecting options overlying SPDRs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any

[6] *See* Securities Exchange Act Release No. 50997 (January 7, 2005) (SR-Phlx-2003-40). The Options Floor Broker Management System is a component of AUTOM designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The Options Floor Broker Management System also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. *See* Exchange Rule 1080, Commentary .06.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 5-day pre-filing requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change immediately operative. The Commission notes that by waiving the operative period, the Exchange has stated that it will be able to implement trading in options on SPDRs expeditiously. For these reasons, consistent with the protection of investors and the public interest, the Commission designates that the proposed rule change has become effective and operative immediately.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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-2005-04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR-Phlx-2005-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2005-04 and should be submitted on or before February 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–194 Filed 1–18–05; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A)

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before March 21, 2005.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW., Suite 8300, Washington, DC 20416

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Program Analyst, 202–205–7528, *sandra.johnston@sba.gov* or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION:

Title: ''U.S. Small Business Administration Application for Section 504 Loan.''

Description of Respondents: Certified Development Companies regulated by SBA.

Form No: 1244.

Annual Responses: 5,200.

Annual Burden: 11,700.

Title: ''7(a) Loan Closing Forms.''

Description of Respondents: 7(a) Participants.

Form No's: 159, 160, 160A.

Annual Responses: 115,000.

Annual Burden: 9,584.

Title: ''Request for Borrowers (Financial Statement).''

Description of Respondents: SBA Borrowers or guarantor's who request compromise.

Form No: 770.

Annual Responses: 5,000.

Annual Burden: 5,000.

Title: ''Servicing Agent Agreement.''

Description of Respondents: Certified Development Companies and SBA Borrowers.

Form No: 1506.

Annual Responses: 4,200.

Annual Burden: 4,200.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Carol Walker, Director, Civil Rights Compliance, Small Business Administration, 409 3rd Street SW., Suite 5000, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Carol Walker, Program Analyst, 205–7149, *carol.walker@sba.gov* or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION:

Title: ''Notice to New SBA Borrowers.''

Description of Respondents: New SBA Borrowers.

Form No: 793.

Annual Responses: 486,000.

Annual Burden: 487,600.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 05–989 Filed 1–18–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Listing of All the Small Business Administration Currently Approved Information Collections

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the U.S. Small Business Administration's currently approved information collections.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

Title of collection	OMB Control No.	Expiration date
Surety Bond Guarantee Assistance	3245–0007	3/31/2007
Size Status Declaration	3245–0009	8/31/2007
Request from Borrowers (Financial Statements)	3245–0012	5/31/2005
Disaster Business Loan Application	3245–0017	7/31/2007
Disaster Home Loan Application	3245–0018	9/30/2006
Pro-Net	3245–0024	2/28/2007
SBIC Management Assessment Questionnaire & License Application; Exhibits to SBIC License App. and Mgmt. Assessment Questionnaire	3245–0062	4/30/2007
SBIC Financial Reports	3245–0063	10/31/2007
U.S. Small Business Administration Application for Section 504 Loan	3245–0071	4/30/2005
CDC Annual Report Guide	3245–0074	8/31/2007
Training Program Evaluation	3245–0075	3/31/2007
Notice to New SBA Borrowers	3245–0076	5/31/2007
Reports to SBA; Provisions of 13 CFR 120.472	3245–0077	9/30/2006
Portfolio Financing Report	3245–0078	9/30/2007
Statement of Personal History	3245–0080	12/31/2006
25-Model Corp. Resol. or GP Certif., 33-Model Letter to Selling Agent 34-Bank ID 1065 Appl. Lic, Assure. of Compliance	3245–0081	7/31/2005
Disaster Home/Business Loan Inquiry Record	3245–0084	9/30/2006
Nomination for the Small Business Prime Contractor & Nomination of the Small Business Subcontractor of the Year Award	3245–0096	12/31/2005
Application for Small Business Size Determination	3245–0101	8/31/2006
Request for Information Concerning Portfolio Financing	3245–0109	9/30/2006
Borrower's Progress Certification Form	3245–0110	9/30/2006
Financial Institution Confirmation Form	3245–0116	8/31/2006
Disclosure Statement, Leveraged Licenses and Disclosure Statement Non-Leveraged Licensees	3245–0118	11/30/2005
Governor's Request for Disaster Declaration	3245–0121	5/31/2006
Transaction Report on Loans Serviced by Lenders	3245–0131	5/31/2006
Lender Transcript of Account	3245–0132	3/31/2005
Disaster Survey Worksheet	3245–0136	3/31/2007
Federal Cash Transaction Report, Financial Status Report Program Income report, Narrative Program report	3245–0169	3/31/2007
Stockholders Confirmation (Corporation) Ownership Confirmation (Partnership)	3245–0172	8/31/2007
Statement of Personal History	3245–0178	9/30/2006
SBA Counseling Evaluation	3245–0183	5/31/2005
Servicing Agent Agreement	3245–0193	5/31/2005
Settlement Sheet	3245–0200	3/31/2005
7(a) Loan Closing Forms	3245–0201	5/31/2005
8(a) Annual Update	3245–0205	10/31/2005
Secondary Market Assignment and Disclosure Form	3245–0212	12/31/2005
Small Business Administration; Application for Certificate of Competency	3245–0225	9/30/2007
Representatives Used and Compensation Paid for Services in Connection with obtaining Federal Contracts	3245–0270	12/31/2005
Financing Eligibility Statement—Social Disadvantage		
Disadvantage/Economic Disadvantage	3245–0301	9/30/2007
8(a)/SDB Paper and Electronic Application	3245–0313	8/31/2007
Voluntary Customer Surveys in accordance with E.O. 12862	3245–0314	6/30/2005
HUBZone internet Application Form	3245–0320	2/28/2006
Entrepreneurial Development Management Information System (EDMIS) Counseling Information Form & Management Training Report	3245–0324	9/30/2006
Pre-Disaster Mitigation Small Business Loan Application	3245–0326	9/30/2006
New Market Venture Capital (NMVC) Program Application Funding and reporting	3245–0332	9/30/2005
NMVC Program Application interview Question; SSBIC Applicant Tech. Proposal; Request for Approval of Management Services	3245–0338	7/31/2005
Veterans Business Ownership Survey	3245–0340	4/30/2006
Costs of litigation to small business; executive Interview questionnaire	3245–0345	8/31/2006
PCLP Quarterly loan lose reserve report and PCLP Request	3245–0346	2/28/2007
Small Business questionnaire (Use of Telecommunications)	3245–0347	8/31/2006
SBA Express Information Collection	3245–0348	2/28/2006
HUBzone Application Data Update	3245–0350	12/31/2005
Entrepreneurial Development Impact Survey	3245–0351	12/31/2005
Microloan Program Electronic Reporting System (MPERS)	3245–0352	7/31/2007

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 05–990 Filed 1–18–05; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collections should be submitted to the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the address and fax number listed below: (SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: 410–965–6400. *OPLM.RCO@ssa.gov.*

The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Application for Help with Medicare Prescription Drug Plan Costs, SSA–1020SC—0960–NEW.* The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; MMA) establishes a new Medicare Part D program for voluntary prescription drug coverage for premium, deductible, and cost-sharing subsidies for certain low-income individuals. The MMA stipulates that subsidies must be available for individuals who are eligible for the program and who meet eligibility criteria for help with premium, deductible, and/or co-payment costs.

Individuals who receive these subsidies may ask SSA to redetermine the amount of help they receive if they experience a ''subsidy-changing event,'' including marriage, separation, divorce, an annulment, or the death of a spouse. Until late 2006, when redetermination forms will become available, SSA will use form SSA–1020–SC, the Application for Help with Medicare Prescription Drug Plan Costs, to make redeterminations based on subsidy-changing events. The respondents are individuals whose application for help toward the costs for this program has been approved and are requesting a redetermination of their subsidy based on a subsidy-changing event.

Type of Request: New information collection.

Number of Respondents: 76,000.

Frequency of Response: 1.

Average Burden Per Response: 35 minutes.

Estimated Annual Burden: 44,333 hours.

2. *Application for Help with Medicare Prescription Drug Plan Costs—0960–NEW (Internet/Intranet Application Screens).* The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; MMA) establishes a new Medicare Part D program for voluntary prescription drug coverage for premium, deductible, and cost-sharing subsidies for certain low-income individuals. The MMA stipulates that subsidies must be available for individuals who are eligible for the program and who meet eligibility criteria for help with premium, deductible, and/or co-payment costs. Form SSA–1020, the Application for Help with Medicare Prescription Drug Plan Costs, collects information about an applicant's resources and is used by SSA to determine eligibility for this assistance.

We are proposing electronic versions of the SSA–1020, which will collect the information via the Intranet (the information is provided by the respondent during an interview at a Social Security field office) or the Internet (i1020) (if respondents complete the Internet screens on their own and submit them electronically). The respondents are individuals who are eligible for enrollment in the Medicare Part D program and are requesting assistance with the related costs.

Type of Request: New information collection.

Number of Respondents: 2,000,000.

Frequency of Response: 1.

Average Burden Per Response: 45 minutes.

Estimated Annual Burden: 1,500,000.

Dated: January 12, 2005.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 05–1022 Filed 1–18–05; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (SSA/Department of Homeland Security (DHS) Number 1010)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a modification to a computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a modification of a computer matching program that SSA conducts with DHS.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice either by telefax to (410) 965–5961 or writing to the Associate Commissioner for Income Security Programs, 245 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Income Security Programs as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (P. L.) 100–503), amended the Privacy Act (5 U.S.C. § 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching

by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: January 10, 2005.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) With the Department of Homeland Security (DHS)

A. Participating Agencies

SSA and DHS.

B. Purpose of the Matching Program

The purpose of this matching program is to establish conditions under which DHS agrees to the disclosure of information regarding certain aliens who may, as a result of their current or planned absences from the United States, be subject to nonpayment of benefits in programs administered by SSA. The disclosure will provide SSA with information useful in determining claim and benefit status under both Title II and Title XVI of the Social Security Act, governing Social Security Retirement, Survivors and Disability Insurance Benefits, and Supplemental Security Income, in that certain persons who are outside the United States, or similarly lack appropriate statutorily specified residency and citizenship/alienage status, may not be paid benefits under specific statutory provisions of those titles. The purpose of this modification is to expand the language of the relevant computer matching agreement to encompass a wider definition of persons ineligible to receive Title II Social Security benefits. Public Law (Pub. L.) 108–203 (The Social Security Protection Act of 2004), section 412, expands section 202(n) of the Social Security Act to prohibit payment of retirement or disability benefits to number holders removed from the United States under section 237(a) or under section 212(a)(6)(A) of the Immigration and Nationality Act of 1952 (INA), as amended.

C. Authority for Conducting the Matching Program

Legal authority for the relevant disclosures of this matching operation is contained in sections 202(n) of the Social Security Act as amended by section 412 of Pub. L. 108–203, 1611(f), and 1614(a)(1) of the Social Security Act (42 U.S.C. 402(n) 1382(f) and 1382c (a)(1) (the Act) and 8 U.S.C. 1611 and 1612). Section 1631(e)(1)(B) of the Act, 42 U.S.C. 1383(e)(1)(B) requires SSA to verify declarations of applicants for, and recipients of, Supplemental Security Income (SSI) payments before making a determination of eligibility or payment amount. Section 1631(f) of the Act (42 U.S.C. 1383(f)) requires Federal agencies to provide SSA with information necessary to verify SSI eligibility or benefit amounts or to verify other information related to these determinations. In addition, section 202(n)(2) of the Act specifies that the ''Attorney General or the Secretary of the [Department of Homeland Security]'' notify the Commissioner of Social Security when certain individuals are removed under specified provisions of section 237(a) or under section 212(a)(6)(A) of the Immigration and Nationality Act (INA).

Categories of Records and Individuals Covered by the Matching Agreement

DHS will disclose to SSA two data files as described below:

1. Aliens Who Leave the United States Voluntarily

DHS will provide SSA with an electronic file from its Computer Linked Application Information Management System (CLAIMS) (Justice/INS 013 system of records, most recently published at 62 FR 59734, dated 11/04/97, which is electronically formatted for transmission to SSA). CLAIMS contains information on resident aliens who are SSI recipients and who have left or plan to leave the United States for any period of 30 consecutive days. SSA will then match the DHS CLAIMS data with: Social Security number (SSN) applicant and holder information, maintained in SSA's Master Files of Social Security Number (SSN) Holders and SSN Applications, SSA/OEEAS 60–0058 (most recently published at 65 FR 66279, dated 11/03/2000); and, SSA's Supplemental Security Income Record and Special Veterans Benefits (SSR) (most recently published at 66 FR 11079 SSA/OEEAS 60–0103, dated 02/21/2001).

2. Aliens Who Are Deported From the United States

DHS will also provide SSA with an electronic file containing information on deported number holders from its Deportable Alien Control System (DACS) (Justice/INS–012, full text published at 65 FR 46738, dated 07/31/2000, modified at 66 FR 66712, dated 01/22/2001). Electronically formatted for transmission to SSA, DACS is scheduled to be replaced by the Enforce Removal Module (EREM). After such transition, EREM will be the system of records used in the match. SSA will then match the DHS EREM data with: applicant and holder information maintained in SSA's Master Files of Social Security Number (SSN) Holders and SSN Applications SSA/OEES 09–60–0058, published at 65 FR 66279 (11/03/00), the Master Beneficiary Record SSA/OEEAS 09–60–0090, most recently published at 66 FR 11080, dated 02/21/2001); and the Supplemental Security Record.

Inclusive Dates of the Match

The matching agreement for this program shall become effective no sooner than 40 days after notice of the matching program is sent to Congress and the Office of Management and Budget (OMB) or 30 days after publication of this notice in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 05–1021 Filed 1–18–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications of Ameristar Air Cargo, Inc. D/B/A Ameristar Charters for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2005–1–11), Dockets OST–2003–16773 and OST–2003–16774.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Ameristar Air Cargo, Inc. d/b/a Ameristar Charters fit, willing, and able, and awarding it amended certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than January 25, 2005.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–2003–16773 and OST–2003–16774 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room PL–401), 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Vanessa R. Wilkins, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: January 11, 2005.

Karan K. Bhatia,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 05–960 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Jack Edwards Airport, Gulf Shores, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on land release request.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the City of Gulf Shores, Alabama to release for future sale to commercial or industrial users a parcel containing 15.35 acres of surplus property, located at the Jack Edwards Airport.

DATES: Comments must be received on or before February 18, 2005.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The Honorable Billy Duke, Mayor of Gulf Shores, Alabama at the following address: Post Office Box 299, Gulf Shores, AL 36547–0299.

FOR FURTHER INFORMATION CONTACT: William Schuller, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9883. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the City of Gulf Shores to release 15.35 acres of surplus property at the Jack Edwards Airport. The property will be sold in whole or in part to commercial users for fair market value. The property is contiguous with the existing industrial park located in the southeast corner of the airport. The net proceeds from the sale of this property will be used for airport projects approved by the FAA.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the City Hall, City of Gulf Shores, Alabama.

Issued in Jackson, Mississippi, on January 11, 2005.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 05–966 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environment Impact Statement; Fort Lauderdale-Hollywood International Airport, Fort Lauderdale, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent; Notice of Scoping Meetings.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this Notice of Intent to announce publicly that an Environmental Impact Statement (EIS) will be prepared and considered for the proposed extension of Runway 9R/27L including associated improvements described below at the Fort Lauderdale-Hollywood International Airport.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Lane, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024, (407) 812–6331 extension 129.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA, in cooperation with Broward County, Florida, will prepare an EIS for a proposed project to lengthen and widen Runway 9R/27L at the Fort Lauderdale-Hollywood International Airport to a full length of 8,600 feet by 150 feet wide. The existing dimension of Runway 9R/27L is 5,276 feet by 100 feet, which accommodates both general aviation and commuter aircraft. The proposed project would allow commercial jet aircraft to utilize the extended runway.

An extension of the existing parallel taxiway and connecting taxiways to Runway 9R/27L is also proposed. The proposed project would entail construction activity on airport property and in Florida East-Coast Railway and Florida Department of Transportation rights-of-way (*i.e.*, site preparation, drainage, paving, marking, lighting, fencing, NAVAIDS, obstruction clearing, environmental mitigation, and other associated work required for the runway extension).

The EIS will include the evaluation of a no-build alternative and other reasonable alternatives that may be identified during the agency and public scoping meetings. The proposed runway extension would accommodate the forecast traffic at Fort Lauderdale-Hollywood International Airport through the year 2017. Fort Lauderdale-Hollywood International Airport has experienced growth in aircraft activity in recent years that has led to delays in aircraft operations. The FAA's Airport Capacity Benchmark Report of 2001 identified Fort Lauderdale-Hollywood International Airport as a congested airport. The Airport Master Plan accepted on April 19, 1995, and more recently the Leigh Fisher Associates Report of November 2003 indicated that significant future airfield congestion and aircraft delay could be anticipated without some modification to the existing airfield facilities.

Increased use of the extended runway by air carrier aircraft will result in changes in runway use. The EIS will determine any noise impacts associated with changes in runway use. In addition to noise impacts, the EIS will determine

all environmental impacts, such as and not limited to, impacts on air and water quality, wetlands, ecological resources, floodplains, historic resources, hazardous wastes, coastal zone management, socioeconomics and economic factors.

Scoping: To ensure that the full range of issues related to the proposed project are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Public and agency scoping meetings will be conducted to identify any significant issues associated with the proposed project.

An Agency Scoping meeting for all Federal, state, and local environmental regulatory agencies will be held on February 23, 2005. This meeting will take place at 1 p.m. in the Sheraton Fort Lauderdale Airport Hotel, 1825 Griffin Road, Dania, Florida 33004.

A Public Scoping meeting for the general public will be held on February 24, 2005. This meeting will be conducted between 2 p.m. and 8 p.m. in the Paramount Ballroom and Foyer at the Sheraton Fort Lauderdale Airport Hotel, 1825 Griffin Road, Dania, Florida 33004.

Written comments may be mailed to the Informational contact listed above within 30 days following the scoping meeting.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Orlando, Florida, January 19, 2005.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. 05–965 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare an Environmental Impact Statement and To Hold Environmental Scoping Meetings for Extension of Runway 5–23 and Other Airport Improvement Projects at Providence-T.F. Green Airport, Warwick, RI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public environmental scoping meetings.

SUMMARY: The Federal Aviation Administration (FAA) is issuing notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for airport projects proposed by the Rhode Island Airport Corporation (RIAC). These projects include an extension of Runway 5–23 and other projects included in the T.F. Green Airport Master Plan. To ensure that all significant issues related to the proposed action are identified, public scoping meetings will be held.

FOR FURTHER INFORMATION CONTACT: John Silva, Manager, Environmental Programs, Airports Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone number: (617) 238–7602.

SUPPLEMENTARY INFORMATION: Public scoping meeting were first held on July 25, 2002. After initial work commenced on the EIS for the Airport Improvements at T.F. Green Airport, the EIS was postponed while additional airport master planning was undertaken, and the Airport Master Plan was revised to advance a long-term need for a major extension of Runway 5–23 to a reasonably foreseeable project in the nearer term. Because an environmental evaluation of a major extension of Runway 5–23 was not part of the 2002 Scope of Work for the EIS, FAA is conducting additional public scoping. This project and other proposed projects have the potential for significant adverse environmental effects, including aircraft noise, community disruption, and wetlands fill. Comments and suggestions are invited from federal, state, and local agencies and other interested parties in order to ensure that a full range of issues related to the proposed projects are identified and addressed in the scope of work for the EIS. Comments and suggestions may be mailed to FAA at the above address.

Public Scoping Meetings: In order to provide public input, a scoping meeting for Federal, State, and local governmental agencies will be held on Tuesday, February 8, 2005, at 1 p.m. at the Radisson Airport Hotel, 2081 Post Road, Warwick, Rhode Island.

An additional meeting to receive general public input will be held the same day at the same location, between 5 and 8 p.m. The format of this meeting will permit attendance anytime during this period. Attendees should allow for at least one hour. FAA recommends that commenters place emphasis on the extension of Runway 5–23 at these scoping meetings, since other projects in the EIS were the subject of public comment and input in 2002. Representatives of Federal, State, and local governmental agencies are encouraged to attend both events. Additional information may be obtained by contacting FAA at the above address or telephone number.

Issued in Burlington, Massachusetts, on January 4, 2005.

LaVerne F. Reid,

Acting Manager, Airports Division, FAA, New England Region.

[FR Doc. 05–968 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Meeting With Interested Persons To Discuss the Proposed Federal Aviation Administration Policy (Draft Order 8110.RC) for the Certification of Restricted Category Aircraft

AGENCY: Federal Aviation Administration, (DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA will hold two informational meetings to discuss the proposed policy (Draft Order 8110.RC) that the FAA's Aircraft Certification Service personnel, Flight Standards Service Personnel, persons designated by the Administrator, and organizations associated with the certification process required by Title 14 of the Code of Federal Regulations (14 CFR) will use during the certification evaluation of restricted category aircraft. These public meetings will be a continuation of information gathering for the evaluation of Restricted Category Aircraft Applications originally offered to the public for comments in the **Federal Register** dated October 8, 2004, Page 60454 (Volume 69, Number 195). Notes from these informational meetings will be posted on the Internet at: *http://www.faa.gov/Certification/Aircraft/DraftDoc/Comments.htm.*

DATES: The first meeting will be held on Tuesday, February 8, 2005, from 9 am.m. to 12 noon. The second public meeting will be held on the east coast of the U.S., at a date and location to be determined.

ADDRESSES: The first meeting will be held at the Anaheim Convention Center (concurrent with HAI Heli-Expo), located at 800 W. Katella Ave., Anaheim, CA 92802.

FOR FURTHER INFORMATION CONTACT: To obtain additional details on these meetings, please contact Mr. Graham Long, AIR–110, Room 815, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–3715, FAX: (202)

237–5340, or e-mail *9-awa-air110-gn12@faa.gov*.

Issued in Washington, DC, on January 11, 2005.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 05–967 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of Environmental Impact Statement for the Tucson Urban Corridor in Tucson, AZ

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement (EIS). Note: The following notice is an update to replace the notice published in the **Federal Register** on 12/21/04.

SUMMARY: The Federal Transit Administration (FTA) and the City of Tucson, Department of Transportation (TDOT), intend to prepare an Alternatives Analysis (AA) and an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) on a proposal by the City of Tucson to provide additional transit service to the urban core of the City of Tucson. The AA/EIS will consider the following alternatives: (1) A No-Build Alternative, consisting of improvements contained in the Pima Association of Governments (PAG) 2025 Regional Transportation Plan (RTP); (2) Transportation System Management Alternative (TSM), consisting of all reasonable cost-effective transit service improvements within the urban core short of a major investment in a New Starts project; (3) Rubber Tired Rapid Bus Circulator operating in mixed traffic (4) Modern Streetcar operating in mixed traffic; and (5) Heritage Trolley in mixed traffic. The type, location, and need for ancillary facilities, such as maintenance facilities, will also be considered for each alternative. In addition, alternatives that are identified from the scoping process will be evaluated in the AA. This notice is an update to replace the notice published in the **Federal Register** on 12/21/04.

Scoping will be accomplished through correspondence and discussions with interested persons; organizations; and Federal, State, and local agencies; and through public and agency meetings. Depending on the outcome of the scoping process and the analysis of a wide range of transit alternatives in the Draft EIS (DEIS), a Locally Preferred Alternative (LPA) will be selected and evaluated in the Final EIS (FEIS). The FEIS will evaluate the potential impacts of the selected investment strategy (the Build Alternative) and a No-Build Alternative.

DATES: Comment Due Date: Written comments on the scope of alternatives and impacts to be considered in the AA/EIS must be received no later than March 28, 2005, and must be sent to the City of Tucson at the address indicated below.

Scoping Meeting Date: A public scoping meeting will be held from 4:30 p.m. to 6:30 p.m. on Wednesday, February 23, 2005 at the Historic Depot, 400 N. Toole Avenue. Oral and written comments may be given at the scoping meeting; a stenographer will record oral comments. Persons with disabilities should contact Joan Beckim (see **ADDRESSES** section below) 72 hours prior to the scoping meeting for special arrangements.

ADDRESSES: Written comments should be sent to Ms. Shellie Ginn, Tucson Urban Corridor Study Project Manager, City of Tucson, Department of Transportation, 201 N. Stone Avenue, 6th Floor, Tucson, Arizona 85726–7210. E-mail: *shellie.ginn@tucsonaz.gov.* Phone: (520) 791–4372.

To be added to the mailing list, contact Ms. Shellie Ginn at the address listed above. Please specify the mailing list of the Tucson Urban Corridor Study Alternatives Analysis/Draft Environmental Impact Statement (AA/DEIS). Persons with special needs such as sign language interpretation should contact Joan Beckim, Public Involvement Coordinator, 110 S. Church, #3350, Tucson, Arizona 85701. E-mail: *info@tucsontransitstudy.com.* Phone (520) 624–5656. The dates and addresses of the scoping meetings are given in the **DATES** section above. All locations are accessible to people with disabilities.

FOR FURTHER INFORMATION CONTACT: To request a scoping information packet, contact Ms. Shellie Ginn, Tucson Urban Corridor Study Project Manager, City of Tucson, Department of Transportation, 201 N. Stone Avenue, Tucson, Arizona 85726–7210. E-mail *shellie.ginn@tucsonaz.gov.* Phone: (520) 791–4372. The Federal agency contact is Mr. Hymie Luden, Office of Planning and Program Development, FTA, 201 Mission Street, Room 2210, San Francisco, CA 95105. Phone: (415) 744–2732.

SUPPLEMENTARY INFORMATION:

I. Description of Study Area and Scope

The Federal Transit Administration (FTA), as joint lead agency with the City of Tucson, will prepare an AA/EIS on a proposal to improve transit service in an approximately five-mile long corridor in central Tucson, Arizona. The study area for the Tucson Urban Corridor Study is bounded by 22nd Street to the south; Campbell Avenue to the east; Grant Road to the north; and Grande Avenue to the west. Most of the study area is densely developed with a mixture of urban land uses and includes the University of Arizona main and medical campuses, Main Gate retail area, Fourth Avenue retail area, downtown Tucson and the emerging Rio Nuevo area. Although not a part of the formal AA/EIS process for the corridor study, results and recommendations will be coordinated with the Pima Association of Government's effort to prepare a multi-modal comprehensive transportation plan identifying opportunities for future transportation connections throughout the Tucson metropolitan area. The City of Tucson will perform conceptual engineering for transit alternatives within the Tucson Urban Corridor for the AA/DEIS that satisfies NEPA requirements. In addition, a financial plan will be developed that examines alternative funding sources.

II. Purpose and Need

The Tucson Urban Corridor area is a major employment and activity center. The study corridor continues to experience significant growth in population and jobs. The city's largest activity center, the University of Arizona, is included in the study area and attracts over 50,000 trips daily and whose master plan includes significant expansion while holding parking to a constant 2004 level. The University is a land locked urban campus whose primary mode of access in the future will need to be transit. Along with this growth, traffic congestion and capacity deficiencies are expected to increase. Roadway capacity options would be difficult given the urban nature of the area and the magnitude of historic structures and neighborhoods in the study area. Inadequate transit service has hampered access to this area and to other study area destinations. A major transit investment is recognized as a feasible alternative to providing additional capacity within this area.

The project is included in the PAG 2025 RTP as an unfunded project. Funding would be considered as part of a proposed 2006 RTP financing proposal.

III. Alternatives

Alternatives have been considered to address transportation issues in the study corridor, connecting major activity centers in the central core, including downtown Tucson, the Rio Nuevo Master Plan area, the 4th Avenue/Main Gate retail corridors, the University of Arizona, and the Arizona Health Sciences Center (AHSC).

The Tucson Urban Corridor Study will be consistent with Federal Transit Administration (FTA), Alternatives Analysis and Section 5309 New Start Program requirements for determining future federal funding in recommended programs and be consistent with the National Environmental Policy Act (NEPA). The alternatives being considered will analyze mobility needs and identify and compare the costs, benefits, and impacts of a range of transit alignment and technology alternatives. At a minimum, the following alternatives will be considered:

- No-Build.
- Transportation System Management (TSM).
- Rubber Tired Rapid Bus Circulator.
- Heritage Trolley.
- Modern Streetcar.

Specific alignment alternatives include, but are not limited to: (1) 2nd Street through the University of Arizona, University Boulevard, Fourth Avenue, Congress and Pennington streets in the downtown area, and Church Avenue to Granada to serve the emerging Rio Nuevo area. These alternatives will be developed further during the preparation of the AA/DEIS. Additional reasonable Build Alternatives suggested during the scoping process, including those involving other modes, may be considered.

IV. Probable Effects

The purpose of the EIS is to fully disclose the environmental consequences of building and operating a major capital investment in the Tucson Urban Corridor in advance of any decisions to commit substantial financial or other resources towards its implementation. sThe EIS will explore the extent to which study alternatives and alignment options result in environmental impacts and will discuss actions to reduce or eliminate such impacts.

Environmental issues to be examined in the EIS include: Potential changes to the physical environment (natural resources, air quality, noise, water quality, geology, visual); changes in the social environment (land use, development, business and neighborhood disruptions); changes in bicycle traffic, and pedestrian circulation; changes in transit service and patronage; associated changes in traffic congestion; and impacts on parklands and historic sites. Impacts will be identified both for the construction period and for the long-term operation of the alternatives. The proposed evaluation criteria include transportation, social, economic, and financial measures, as required by current federal (NEPA) environmental laws and the implementing regulations of the Council on Environmental Quality and of FTA.

To ensure that the full range of issues related to this proposed action will be addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the City of Tucson, Department of Transportation, Manager as noted in the **ADDRESSES** section above.

V. FTA Procedures

To streamline the NEPA process and to avoid duplication of effort, the agencies involved in the scoping process will consider the results of any previous planning studies or financial feasibility studies prepared in support of a decision by the Pima Association of Governments (PAG) to include a particular alternative in the RTP for metropolitan Tucson. Prior transportation planning studies may be pertinent to establishing the purpose and need for the proposed action and the range of alternatives to be evaluated in detail in the AA/EIS. Depending on the outcome of the scoping process and the analysis of a wide range of transit alternatives, a Locally Preferred Alternative (LPA) will be selected and evaluated in the Draft EIS. The Draft EIS will be prepared simultaneously with conceptual engineering for the alternatives, including station and alignment options. The Draft EIS process will address the potential use of federal funds for the proposed action, as well as assess the social, economic, and environmental impacts of the station and alignment alternatives. Station designs and any alignment options will be refined to minimize and mitigate any adverse impacts.

After publication, the Draft EIS will be available for public and agency review and comment, and a public hearing will be held. Based on the Draft EIS and comments received, the LPA may be refined, and the City of Tucson will further assess the LPA in the Final EIS and will apply for FTA approval to initiate Preliminary Engineering of the LPA.

Issued on: January 11, 2005.

Leslie Rogers,

Regional Administrator.

[FR Doc. 05–959 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34635]

Watco Companies, Inc.—Continuance in Control Exemption—Mission Mountain Railroad, Inc.

Watco Companies, Inc. (Watco) has filed a verified notice of exemption to continue in control of Mission Mountain Railroad, Inc. (MMT), upon MMT's becoming a Class III rail carrier.

The transaction was expected to be consummated on or shortly after December 28, 2004.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34634, *Mission Mountain Railroad, Inc.—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company*, wherein MMT seeks to acquire by purchase and lease from The Burlington Northern and Santa Fe Railway Company (BNSF) rail lines in the State of Montana. The line being purchased is between milepost 1249.35, near Stryker, and milepost 1272.22, near Eureka, in Lincoln County, MT, a distance of approximately 22.87 miles. The rail line being leased is between milepost 1211.86, near Columbia Falls, and milepost 1227.58, near Kalispell, in Flathead County, MT, a distance of approximately 15.72 miles.[1] MMT will operate both lines.

Watco, a Kansas corporation, is a noncarrier that currently controls nine Class III rail carriers: South Kansas and Oklahoma Railroad Company (SKO), Palouse River & Coulee City Railroad, Inc. (PRCC), Timber Rock Railroad, Inc. (TIBR), Stillwater Central Railroad (SLWC), Eastern Idaho Railroad, Inc. (EIRR), Kansas & Oklahoma Railroad, Inc. (K&O), Pennsylvania Southwestern Railroad, Inc. (PSWR), Great Northwest Railroad, Inc. (GNR), and Kaw River Railroad, Inc. (KRR).

Applicant states that: (1) The rail lines operated by SKO, PRCC, TIBR, SLWC, EIRR, K&O, PSWR, GNR, and KRR do not connect with the rail lines being purchased or leased by MMT; (2) the

[1] BNSF is retaining the right to use the wye tracks at Columbia Falls.

continuance in control is not part of a series of anticipated transactions that would connect the rail lines being acquired by MMT with any railroad in the Watco corporate family; and (3) neither MMT nor any of the carriers controlled by Watco are Class I rail carriers. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2). The purpose of the transaction is to reduce overhead expenses, coordinate billing, maintenance, mechanical and personnel policies and practices of its rail carrier subsidiaries and thereby improve the overall efficiency of rail service provided by the ten railroads.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34635, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 12, 2005.

By the Board,

David M. Konschnik,

Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–1005 Filed 1–18–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34634]

Mission Mountain Railroad, Inc.—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company

Mission Mountain Railroad, Inc. (MMT), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by purchase and lease from The Burlington Northern and Santa Fe Railway Company (BNSF) rail lines in the State of Montana. The rail line being purchased is between milepost 1249.35, near Stryker, and milepost 1272.22, near Eureka, in Lincoln County, MT, a distance of approximately 22.87 miles. The rail line being leased is between milepost 1211.86, near Columbia Falls, and milepost 1227.58, near Kalispell, in Flathead County, MT, a distance of approximately 15.72 miles.[1] MMT will operate both lines.

The transaction is related to STB Finance Docket No. 34635, *Watco Companies, Inc.—Continuance in Control Exemption—Mission Mountain Railroad, Inc.,* wherein Watco Companies, Inc., has concurrently filed a verified notice of exemption to continue in control of MMT upon MMT's becoming a Class III rail carrier.

MMT certifies that its projected revenues as a result of this transaction will not result in MMT's becoming a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The transaction was expected to be consummated on or shortly after December 28, 2004.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34634, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 12, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–1006 Filed 1–18–05; 8:45 am]

BILLING CODE 4915–01–P

[1] BNSF is retaining the right to use the wye tracks at Columbia Falls.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34610]

Stillwater Central Railroad, Inc.—Lease Exemption—The Burlington Northern and Santa Fe Railway Company

The Stillwater Central Railroad, Inc. (SLWC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 *et seq.* to acquire by lease and to operate approximately 12.6 miles of rail line owned by The Burlington Northern and Santa Fe Railway Company (BNSF), between: (1) Milepost 549.01 at Wheatland, OK, and milepost 542.0 at Oklahoma City, OK, including the Dayton Lead in Wheatland; (2) milepost 540.0 west of the BNSF North Yard, in Oklahoma City, and milepost 536.4 in Oklahoma City, including the North Yard; and (3) milepost 0.0 on the Packing Town Lead, and a point 500 feet west of the wye connecting the Packing Town Lead with BNSF's Red Rock Subdivision, in Oklahoma City.[1] SLWC will also acquire approximately 5.5 miles of incidental overhead trackage rights between: (1) milepost 384.6 and milepost 390.0, on the Red Rock Subdivision, in Oklahoma City; and (2) a point 500 feet west of the wye connecting the Packing Town Lead and the point of connection between the Packing Town Lead and BNSF's Red Rock Subdivision.

SLWC certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier. But, because SLWC's projected annual revenues will exceed $5 million, SLWC has certified to the Board on October 29, 2004, that it sent the required notice of the transaction to the national offices of all labor unions representing employees on the affected lines and posted a copy of the notice at the workplace of the employees on the affected lines on the same date. *See* 49 CFR 1150.42(e).

The transaction was scheduled to be consummated on or after December 28, 2004 (which is 60 days or more after SLWC's certification to the Board that it

[1] BNSF will retain overhead trackage rights over the leased rail lines.

had complied with the Board's rule at 49 CFR 1150.42(e)).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 36410, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 12, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–1007 Filed 1–18–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34646]

Sioux Valley Regional Railroad Authority—Trackage Rights Exemption—Lines of the State of South Dakota

Sioux Valley Regional Railroad Authority (SVRRA), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from the State of South Dakota (the State) [1] overhead trackage rights over a line of railroad extending between milepost (MP) 533.4 near Elk Point, SD (also known as MP 0.0 at East Wye Jct.) and MP 511.90 in Sioux City, IA, including such yard tracks, sidetracks, and connecting tracks (existing or to be constructed) as are reasonable to interchange railcars with The Burlington Northern and Santa Fe Railway Company (BNSF), Union Pacific Railroad Company, and Canadian National Railway Company at Sioux City. The total distance of the Elk Point-Sioux City line is approximately 21.5 miles.

SVRRA certifies that its projected revenues as a result of the SVRRA-South Dakota transaction will not result in SVRRA becoming a Class I or Class II rail carrier, and further certifies that its projected revenues will not exceed $5 million. The SVRRA-South Dakota transaction was scheduled to be consummated on or after January 5, 2005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34646, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on SVRRA's representative: Russell Hazel, Sioux Valley Regional Railroad Authority, c/o Sioux River Ethanol, 29619 Spur Avenue, Hudson, SD 57034.

The notice of exemption filed with respect to the SVRRA-South Dakota transaction in this docket is related to a notice of exemption concurrently filed in a related docket: STB Finance Docket No. 34646 (Sub-No. 1), *D&I Railroad Company—Trackage Rights Exemption—State of South Dakota and Sioux Valley Regional Railroad Authority.* The notice of exemption filed in the related docket contemplates the operation of SVRRA's Elk Point-Sioux City trackage rights by D&I Railroad Company (D&I) on behalf of SVRRA.

SVRRA and D&I have advised that the Elk Point-Sioux City line, which is owned by the State, is now operated on behalf of the State by BNSF, pursuant to a 1986 Operating Agreement. SVRRA and D&I have also advised: That, under the Operating Agreement, the State has the right to grant trackage rights on the Elk Point-Sioux City line subject to certain BNSF consent; that, although the State has the right to grant trackage rights to SVRRA for operations by SVRRA's third-party operator (D&I), BNSF has not consented to the grant of those rights; and that the failure to provide this consent is now the subject of litigation between the State and BNSF in *The Burlington Northern and Santa Fe Railway Company* v. *State of South Dakota,* Case No. 04–470 (S.D. 6th Circuit). SVRRA and D&I have further advised that they recognize that BNSF consent may have to be obtained, either voluntarily or through litigation, before D&I can commence trackage rights operations on the Elk Point-Sioux City line. SVRRA and D&I have suggested, however, that, inasmuch as the Board's authority respecting the notices filed in this docket and in the related docket is ''permissive'' in nature, the filing of the notices in the two dockets is appropriate as a ''prelude'' to obtaining any necessary consent.

By letter filed December 30, 2004, BNSF has advised that it has not given its consent to the third-party trackage rights operation contemplated by SVRRA and D&I, which (BNSF adds) would violate the 1986 Operating Agreement. BNSF has further advised that, in its view, the filings by SVRRA and D&I in this docket and in the related docket are intended to improperly influence the pending State court litigation. BNSF has asked that the Board stress that issuance by the Board of the notices filed in this docket and in the related docket does not represent a determination, by the Board, concerning either the right of the State to grant the Elk Point-Sioux City trackage rights without BNSF's consent or the right of D&I to operate over the Elk Point-Sioux City line without BNSF's consent.

In view of the ongoing litigation concerning the right of the State to grant the trackage rights contemplated in this docket and in the related docket, it seems best to note that the Board has made no determination, one way or the other, concerning either the right of the State to grant the Elk Point-Sioux City trackage rights without BNSF's consent or the right of D&I to operate over the Elk Point-Sioux City line without BNSF's consent. The contractual dispute respecting the scope of the rights retained by or granted to the State and/or BNSF under the 1986 Operating Agreement must be resolved in a court of competent jurisdiction.

Board decisions and notices are available on its Web site at *http://www.stb.dot.gov.*

Decided: January 12, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–1009 Filed 1–18–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34645]

The Burlington Northern and Santa Fe Railway Company—Acquisition and Operation Exemption—State of South Dakota

The Burlington Northern and Santa Fe Railway Company (BNSF), a Class I rail carrier, has filed a verified notice of exemption under 49 CFR 1150.31 to

[1] The trackage rights will be granted by the State acting by and through the South Dakota State Railroad Board and the South Dakota Department of Transportation, Office of Railroads.

acquire and operate approximately 369.7 route miles of railroad lines, referred to as the ''Core Lines,'' that are owned by the State of South Dakota (the State). These lines, which are described in a July 10, 1986 Operating Agreement between a BNSF predecessor (Burlington Northern Railroad Company) and the State, extend principally: between milepost (MP) 777.0 near Aberdeen, SD, and MP 650.6 near Mitchell, SD; between MP 518.9 near Sioux City, IA, and MP 649.7 near Mitchell, SD; between MP 293.1 near Canton, SD, and MP 650.6 near Mitchell, SD; [1] between MPs 74.1 and 68.8 in Sioux Falls, SD; between MP 68.8 near Sioux Falls, SD, and MP 49.4 near Canton, SD; and between MPs 511.9 and 518.9 in Sioux City, IA.

The Core Lines were once part of the rail system operated by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (the Milwaukee Road). The Milwaukee Road entered bankruptcy in 1977, and, in 1980, it received, both from the Interstate Commerce Commission (ICC) and from the bankruptcy court, approval to abandon the Core Lines. In 1981, the abandoned Core Lines were acquired by the State, and, since on or about July 6, 1981, BNSF has provided common carrier rail service over the Core Lines pursuant to various agreements (the most recent of which is the 1986 Operating Agreement) with the State, and pursuant to a Modified Certificate of Public Convenience and Necessity (the modified certificate) issued by the ICC. *See* 49 CFR part 1150, subpart C (§ 1150.21 *et seq.*) (these are the ''modified certificate'' regulations that apply to operations over abandoned rail lines that have been acquired, through purchase or lease, by a State). BNSF contends that it has, under the terms of the 1986 Operating Agreement, a right to acquire the Core Lines from the State.

Because the Core Lines were abandoned by the Milwaukee Road, BNSF has invoked the notice of exemption procedures at 49 CFR part 1150, subpart D (§ 1150.31 *et seq.*) (these are the regulations that apply to acquisitions and operations under § 10901). *See The Burlington Northern and Santa Fe Railway Company—Acquisition and Operation Exemption—Lac Qui Parle Regional Railroad Authority,* STB Finance Docket No. 33364 (STB served Apr. 15, 1997); *Burlington Northern Railroad Company—Acquisition and Operation Exemption—South Dakota Railroad Authority, Finance* Docket No. 32017 (ICC served Apr. 2, 1992).

Under the modified certificate regulations at § 1150.21 *et seq.,* a modified certificate operator may not terminate modified certificate service unless it first provides—to the State, to the Board, and to all persons that have used the line within the preceding six months—60 days' notice. *See* 49 CFR 1150.24. BNSF has not yet provided such notice, but it has stated that, once it has acquired the Core Lines, it will notify the appropriate parties that it will cease to provide service under its § 1150.21 modified certificate but will continue to provide service pursuant to its § 1150.31 exemption notice.

BNSF's § 1150.31 exemption notice was filed to be effective on December 30, 2004. However, by decision served December 29, 2004, the effective date of the exemption was stayed until 11:59 p.m., January 14, 2005. The question of whether the exemption will be stayed beyond that date will be addressed by the Board in a separate decision.

As noted in the decision served December 29, 2004, in this docket, BNSF's asserted right to acquire the Core Lines is disputed by the State, and is now the subject of litigation in *The Burlington Northern and Santa Fe Railway Company* v. *State of South Dakota,* Civ. No. 04–470 (S.D. 6th Circuit). As is also noted in the prior decision, BNSF has acknowledged that, before it can actually acquire title to the Core Lines, it will need to prevail in acquiring the Core Lines from the State whether through voluntary conveyance by the State or involuntary conveyance as may be ordered by the state court. In view of the ongoing litigation concerning BNSF's right, under the terms of the 1986 Operating Agreement, to acquire the Core Lines from the State, it is appropriate to note that the Board has made no determination, one way or the other, concerning BNSF's asserted right to acquire the Core Lines from the State. The contractual dispute respecting the scope of the rights retained by or granted to the State and/or BNSF under the 1986 Operating Agreement must be resolved in a court of competent jurisdiction.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34645, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on BNSF's representative: Adrian L. Steel, Jr., Mayer, Brown, Rowe & Maw LLP, 1909 K Street, NW., Washington, DC 20006–1101.

Board decisions and notices are available on its Web site at *http://www.stb.dot.gov.*

Decided: January 12, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–1011 Filed 1–18–05; 8:45 am]

BILLING CODE 4915–01–P

[1] The distance between MP 293.1 near Canton and MP 650.6 near Mitchell is approximately 81.50 miles. *See* BNSF's § 1150.31 notice, Exhibit 2, Appendix 1, page 6. BNSF has not explained the discrepancy with respect to the milepost designations.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34646 (Sub-No. 1)]

D&I Railroad Company—Trackage Rights Exemption—State of South Dakota and Sioux Valley Regional Railroad Authority

The State of South Dakota (the State) and Sioux Valley Regional Railroad Authority (SVRRA) have agreed to grant overhead trackage rights to D&I Railroad Company (D&I) over a State-owned line of railroad extending between milepost (MP) 533.4 near Elk Point, SD (also known as MP 0.0 at East Wye Jct.) and MP 511.90 in Sioux City, IA, including such yard tracks, sidetracks, and connecting tracks (existing or to be constructed) as are reasonable to interchange railcars with The Burlington Northern and Santa Fe Railway Company (BNSF), Union Pacific Railroad Company, and Canadian National Railway Company at Sioux City. The total distance of the trackage rights to be granted to D&I is approximately 21.5 miles. The D&I–SVRRA transaction contemplated by the parties was scheduled to be consummated on or after January 5, 2005.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

The notice of exemption filed in this docket was filed under 49 CFR

1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34646 (Sub-No. 1), must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on D&I's President: Jack Parliament, D&I Railroad Company, P.O. Box 5829, Sioux Falls, SD 57117.

The notice of exemption filed with respect to the D&I–SVRRA transaction in this docket is related to a notice of exemption concurrently filed in a related docket: STB Finance Docket No. 34646, *Sioux Valley Regional Railroad Authority—Trackage Rights Exemption—Lines of the State of South Dakota.* The notice of exemption filed in the related docket contemplates SVRRA's acquisition from the State of the trackage rights that SVRRA intends to grant to D&I.

SVRRA and D&I have advised that the Elk Point-Sioux City line, which is owned by the State, is now operated on behalf of the State by BNSF, pursuant to a 1986 Operating Agreement. SVRRA and D&I have also advised: That, under the Operating Agreement, the State has the right to grant trackage rights on the Elk Point-Sioux City line subject to certain BNSF consent; that, although the State has the right to grant trackage rights to SVRRA for operations by SVRRA's third-party operator (D&I), BNSF has not consented to the grant of those rights; and that the failure to provide this consent is now the subject of litigation between the State and BNSF in *The Burlington Northern and Santa Fe Railway Company* v. *State of South Dakota,* Case No. 04–470 (S.D. 6th Circuit). SVRRA and D&I have further advised that they recognize that BNSF consent may have to be obtained, either voluntarily or through litigation, before D&I can commence trackage rights operations on the Elk Point-Sioux City line. SVRRA and D&I have suggested, however, that, inasmuch as the Board's authority respecting the notices filed in this docket and in the related docket is ''permissive'' in nature, the filing of the notices in the two dockets is appropriate as a ''prelude'' to obtaining any necessary consent.

By letter filed December 30, 2004, BNSF has advised that it has not given its consent to the third-party trackage rights operation contemplated by SVRRA and D&I, which (BNSF adds) would violate the 1986 Operating Agreement. BNSF has further advised that, in its view, the filings by SVRRA and D&I in this docket and in the related docket are intended to improperly influence the pending state court litigation. BNSF has asked that the Board stress that issuance by the Board of the notices filed in this docket and in the related docket does not represent a determination, by the Board, concerning either the right of the State to grant the Elk Point-Sioux City trackage rights without BNSF's consent or the right of D&I to operate over the Elk Point-Sioux City line without BNSF's consent.

In view of the ongoing litigation concerning the right of the State to grant the trackage rights contemplated in this docket and in the related docket, it seems best to note that the Board has made no determination, one way or the other, concerning either the right of the State to grant the Elk Point-Sioux City trackage rights without BNSF's consent or the right of D&I to operate over the Elk Point-Sioux City line without BNSF's consent. The contractual dispute respecting the scope of the rights retained by or granted to the State and/or BNSF under the 1986 Operating Agreement must be resolved in a court of competent jurisdiction.

Board decisions and notices are available on its Web site at *http://www.stb.dot.gov.*

Decided: January 12, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–1010 Filed 1–18–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 257X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Blackford County, IN

Norfolk Southern Railway Company (NSR) has filed a notice of exemption [1] under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon an 8.60-mile line of railroad between milepost RK–130.00 at Converse, and milepost RK–138.60 at Hartford City, in Blackford County, IN. The line traverses United States Postal Service Zip Codes 46919 and 47348.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 18, 2005, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 31, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 8, 2005, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

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[1] The notice of exemption was received by the Board on December 29, 2004. In a letter accompanying NSR's notice of exemption, NSR indicates that it intended to file the notice of exemption on December 30, 2004, and, if the Board received the filing before that date, NSR requests that the filing date be postponed to December 30, 2004. Accordingly, December 30, 2004 is used as the filed date and the date for computation of due dates in this proceeding.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Effective October 31, 2004, the filing fee for an OFA increased to $1,200. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2004 Update,* STB Ex Parte No. 542 (Sub-No. 11) (STB served Oct. 1, 2004).

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, General Attorney, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510–2191.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 24, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by January 19, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 12, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–1004 Filed 1–18–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 259X)]

Tennessee Railway Company—Abandonment Exemption—in Anderson and Campbell Counties, TN

Tennessee Railway Company (TNR) [1] has filed a notice of exemption under 49 CFR 1152 Subpart F-*Exempt Abandonments* to abandon a 14.04-mile line of railroad between milepost TE–27.96 at Nick's Creek and milepost TE–42.00 at Devonia, in Anderson and Campbell Counties, TN. The line traverses United States Postal Service Zip Code 37710.

TNR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to this exemption, any employee adversely affected by this abandonment shall be protected under *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 18, 2005,[2] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 31, 2005.

Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 8, 2005, with: the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

TNR has filed an environmental report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 24, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), TNR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by TNR's filing of a notice of consummation by January 19, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: January 11, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–908 Filed 1–18–05; 8:45 am]

BILLING CODE 4910–15–P

[1] TNR is a wholly owned subsidiary of Norfolk Southern Railway Company (NSR).

[2] TNR has requested that the Board treat the notice of exemption as being filed on December 30, 2004, rather than the actual date the applicant filed it, December 29, 2004. The Board will set December 30, 2004 as the filing date and use this date to compute the due dates in this proceeding.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Effective October 31, 2004, the filing fee for an OFA increased to $1,200. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2004 Update*, STB Ex Parte No. 542 (Sub-No. 11) (STB served Oct. 1, 2004).

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (Pay Now Enter Info Page)]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to electronically submit payment for VA benefits debts owed.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 21, 2005.

ADDRESSES: Submit written comments on the collection of information to David Sturm, VA Debt Management Center, Bishop Henry Whipple Federal Building, P.O. Box 11930, St. Paul, MN 55111–0930 or e-mail to: *DMCDSTUR@VBA.VA.GOV*. Please refer to ''OMB Control No. 2900–New (Pay Now Enter Info Page)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: David Sturm at (612) 970–5702 or FAX (612) 970–5687.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OM's functions, including whether the information will have practical utility; (2) the accuracy of OM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Pay Now Enter Info Page.

OMB Control Number: 2900–New (Pay Now Enter Info Page).

Type of Review: New collection.

Abstract: The information collected on the Pay Now Enter Info Page Web site is used to initiate voluntary online payments from claimants owing debts to VA. Claimants completing the online form are redirected to the Department of Treasury's Pay.gov Web site to make payments with credit or debit cards, or directly from their bank account.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,167 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Daily.

Estimated Number of Respondents: 7,000.

Dated: January 5, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 05–976 Filed 1–18–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (LAPP)]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed existing collection in use without an OMB control number, and allow 60 days for public comment in response to the notice. This notice solicits comments information needed to certify a lender's nominee as a VA Staff Appraisal Reviewer.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 21, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–New (LAPP)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Lender Appraisal Processing Program Certification, VA Form 26–0785.

OMB Control Number: 2900–New (LAPP).

Type of Review: Existing collection in use without an OMB control number.

Abstract: VA Form 26–0785 is completed by lenders to nominate employees for approval as a VA approved Staff Appraisal Reviewer (SAR). Once approved, SAR's will have the authority to review real estate appraisals and to issue notices of values on behalf of VA.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 83 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: January 5, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 05–978 Filed 1–18–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0075]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to provide self-certified statements in support of various types of claims processed by VA.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 21, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0075'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement in Support of Claim, VA Form 21–4138.

OMB Control Number: 2900–0075.

Type of Review: Extension of a currently approved collection.

Abstract: Statements submitted by or on behalf of a claimant must contain a certification by the respondent that the information provided to VA is true and correct in support of benefits claims processed by VA. VA Form 21–4138 facilitates claims processing by providing a uniform format for the certification statement.

Affected Public: Individuals or households.

Estimated Annual Burden: 188,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 752,000.

Dated: January 5, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 05–979 Filed 1–18–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0510]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine whether children's incomes can be excluded from consideration in determining a parent's eligibility for non-service-connected pension.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 21, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0510'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Exclusion of Children's Income, VA Form 21–0571.

OMB Control Number: 2900–0510.

Type of Review: Extension of a currently approved collection.

Abstract: The information collected on VA Form 21–0571 is used to determine whether children's income can be excluded from consideration in determining a parent's eligibility for non-service connected pension. A veteran's or surviving spouse's rate of Improved Pension is determined by family income. Normally, income of children who are members of the

household is included in this determination. However, children's income may be excluded if it is unavailable or if consideration of that income would cause hardship in considering their income.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,025 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 2,700.

Dated: January 6, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 05–980 Filed 1–18–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Homeless Veterans will be held from Wednesday, February 16, 2005, through Friday, February 18, 2005. The Committee will meet at 8:30 a.m. to 4:30 p.m. each day in the Tropical Room at the Caribe Hilton Hotel, San Geronimo Grounds, Las Rosales Street, San Juan, Puerto Rico 00901. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs with an ongoing assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless veterans. The Committee shall assemble and review information relating to the needs of homeless veterans and provide ongoing advice on the most appropriate means of providing assistance to homeless veterans. The Committee will make recommendations to the Secretary regarding such activities.

On February 16, 2005, the Committee will receive reports from program experts, assess the availability of health care and benefit services, review the Capital Asset Realignment for Enhanced Services (CARES) project and other initiatives designed to assist veterans who are homeless. On February 17 and 18 the Committee will review legislative recommendations and work on its annual report.

Those wishing to attend the meeting should contact Mr. Pete Dougherty, Designated Federal Officer, at (202) 273–5764. No time will be allocated for receiving oral presentations during the public meeting. However, the Committee will accept written comments from interested parties on issues affecting homeless veterans. Such comments should be referred to the Committee at the following address: Advisory committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: January 11, 2005.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–981 Filed 1–18–05; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Performance Review Board Members

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice updates the VA Performance Review Board of the Department of Veterans Affairs that was published in the **Federal Register** on November 2, 2004 (Vol. 69,211).

EFFECTIVE DATE: January 19, 2005.

FOR FURTHER INFORMATION CONTACT: Charlotte Moment, Office of Human Resources Management (052B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8165.

VA Performance Review Board (PRB)

R. Allen Pittman, Assistant Secretary of Human Resources and Administration (Chairperson)
Nora E. Egan, Chief of Staff
Thomas G. Bowman, Deputy Chief of Staff (Alternate)
Ronald R. Aument, Deputy Under Secretary for Benefits, Veterans Benefits Administration
Michael Walcoff, Associate Deputy Under Secretary for Operations, Veterans Benefits Administration (Alternate)
Michael J. Kussman, M.D., Acting Deputy Under Secretary for Health, Veterans Health Administration
Laura J. Miller, Assistant Deputy Under Secretary for Health for Operations and Management, Veterans Health Administration (Alternate)
John H. Thompson, Deputy General Counsel
D. Mark Catlett, Principal Deputy Assistant Secretary for Management
Lucretia M. McClenney, Special Assistant
John A. Wooditch, Deputy Inspector General
Robert B. Holbrook, Director, Office of Construction Management, National Cemetery Administration
Pamela M. Iovino, Acting Assistant Secretary for Congressional and Legislative Affairs

Veterans Benefits Administration PRB

Ronald R. Aument, Deputy Under Secretary for Benefits, (Chairperson)
Geraldine V. Breakfield, Associate Deputy Under Secretary for Management
Robert J. Epley, Associate Deputy Under Secretary for Policy & Program Management
Michael Walcoff, Associate Deputy Under Secretary for Field Operations
James Bohmbach, Chief Financial Officer
Diana M. Rubens, Director, Western Area Office
Thomas Bowman, Deputy Chief of Staff, Office of the Secretary

Veterans Health Administration PRB

Michael J. Kussman, MD, Chair, Acting Deputy Under Secretary for Health
Laura J. Miller, Vice-Chair, Deputy Under Secretary for Health for Operations and Management
Linda W. Belton, Network Director, VISN 11
Everett A. Chasen, Chief Communications Officer
Jeanette A. Chirico-Post, MD, Network Director, VISN 1
Kenneth J. Clark, Network Director, VISN 22
Arthur S. Hamerschlag, VHA Chief of Staff
Daniel F. Hoffmann, Network Director, VISN 6
Robert M. Kolodner, MD, Associate Chief Information Officer
Robert E. Lynch, MD, Network Director, VISN 16
Jimmy A. Norris, Chief Financial Officer
Robert A. Petzel, MD, Network Director, VISN 23
Catherine J. Rick, RN, MSN, Chief Nursing Officer
Linda F. Watson, Network Director, VISN 7
Nevin M. Weaver, Director, Management Support Office (Ex Officio)
Robert L. Wiebe, MD, Network Director, VISN 21

Mark E. Shelhorse, Acting Chief Consultant, Mental Health Strategic Health Care Group

Dennis Duffy, Acting Assistant Secretary for Policy, Planning, and Preparedness

Office of Inspector General PRB

George Grob, Department of Health and Human Services, Office of Inspector General

George J. Opfer, Department of Labor, Office of Inspector General

Michael P. Stephens, Department of Housing and Urban Development, Office of Inspector General

Dated: January 11, 2005.

Anthony J. Principi

Secretary of Veterans Affairs.

[FR Doc. 05–977 Filed 1–18–05; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 70, No. 12
Wednesday, January 19, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, 230, 232, 239, 240, 242, 245 and 249

[Release Nos. 33–8518; 34–50905; File No. S7–21–04]

RIN 3235–AF74

Asset-Backed Securities

Correction

In rule document 05–53 beginning on page 1506 in the issue of Friday, January 7, 2005, make the following correction:

On page 1522, the table is corrected in part to read as follows:

DISCLOSURE FOR FORM S–1 FOR REGISTERED ABS OFFERINGS

Existing form items	Required if applicable	May be omitted
* * * * * *	*	*
Item 11. Information with Respect to the Registrant	.....	•
* * * * * *	*	*

[FR Doc. C5–53 Filed 1–18–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
January 19, 2005

Part II

Federal Trade Commission

16 CFR Part 316

Definitions and Implementation Under the CAN-SPAM Act; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 316

[Project No. R411008]

RIN 3084–AA96

Definitions and Implementation Under the CAN-SPAM Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Trade Commission (''FTC'' or ''Commission'') issues its Statement of Basis and Purpose and final Rule pursuant to the requirement imposed by the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (''CAN-SPAM'' or ''the Act'') for the Commission, not later than 12 months after December 16, 2003, to ''issue regulations pursuant to section 7711 [of the Act] defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.''

EFFECTIVE DATE: May 19, 2004, except for § 316.3, which will become effective on March 28, 2005.

ADDRESSES: Requests for copies of the ''primary purpose'' provisions of the Rule and the Statement of Basis and Purpose should be sent to Public Records Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Copies of these documents are also available at the Commission's Web site: *http://www.ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Goodman, Staff Attorney, (202) 326–3071; or Catherine Harrington-McBride, Staff Attorney, (202) 326–2452; Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The ''primary purpose'' provisions of the Rule implement the CAN-SPAM Act by defining the relevant criteria to determine the primary purpose of an electronic mail message. These provisions describe types of electronic mail messages that contain commercial content or what the Act terms ''transactional or relationship'' content, and establish different criteria for each type. These provisions also clarify that the definitions of certain terms taken from the Act and appearing in the Rule are prescribed by particular referenced portions of the Act. The Rule also includes a severability provision that provides that if any portion of the Rule is found to be invalid, the remaining portions will survive.

Statement of Basis and Purpose

I. Background

A. CAN-SPAM Act of 2003

On December 16, 2003, the President signed into law the CAN-SPAM Act.[1] The Act, which took effect on January 1, 2004, imposes a series of new requirements on the use of commercial electronic mail (''e-mail'') messages. In addition, the Act gives Federal civil and criminal enforcement authorities new tools to combat commercial e-mail that is unwanted by the recipient and/or deceptive. The Act also allows state attorneys general to enforce its civil provisions, and creates a private right of action for providers of Internet access service.

In enacting the CAN-SPAM Act, Congress made the following determinations of public policy, set forth in section 7701(b) of the Act: (1) There is a substantial government interest in regulation of commercial electronic mail on a nationwide basis; (2) senders of commercial electronic mail should not mislead recipients as to the source or content of such mail; and (3) recipients of commercial electronic mail have a right to decline to receive additional commercial electronic mail from the same source.

Based on these policy determinations, Congress, in section 7704(a) and (b) of the CAN-SPAM Act, outlawed certain commercial e-mail acts and practices. Section 7704(a)(1) of the Act prohibits transmission of any e-mail that contains false or misleading header or ''from'' line information. Section 7704(a)(1) also clarifies that a header will be considered materially misleading if it fails to identify accurately the computer used to initiate the message because the person initiating the message knowingly uses another protected computer to relay or retransmit the message in order to disguise its origin.[2] The Act also prohibits false or misleading subject headings in commercial e-mail messages.[3] It requires a functioning return e-mail address or similar Internet-based mechanism for recipients to use to ''opt out'' of receiving future commercial e-mail messages,[4] and prohibits the sender, or others acting on the sender's behalf, from initiating a commercial e-mail to a recipient more than 10 business days after the recipient has opted out.[5] In addition, the Act prohibits sending a commercial e-mail message without providing three disclosures: (1) Clear and conspicuous identification that the message is an advertisement or solicitation, (2) clear and conspicuous notice of the opportunity to decline to receive further commercial e-mail messages from the sender, and (3) a valid physical postal address of the sender.[6] Finally, the Act specifies four ''aggravated violations''—practices that compound the available statutory damages when alleged and proven in combination with other CAN-SPAM violations.[7]

The Act authorizes the Commission to enforce violations of the Act in the same manner as an FTC trade regulation rule.[8] Section 7706(f) authorizes the attorneys general of the States to enforce compliance with certain provisions of section 7704(a) of the Act by initiating enforcement actions in Federal court, after serving prior written notice upon the Commission when feasible.[9] CAN-SPAM also authorizes providers of Internet access service to bring a Federal court action for violations of certain provisions of section 7704(a), (b), and (d).[10]

[1] 15 U.S.C. 7701–7713.

[2] 15 U.S.C. 7704(a)(1).

[3] 15 U.S.C. 7704(a)(2).

[4] 15 U.S.C. 7704(a)(3).

[5] 15 U.S.C. 7704(a)(4).

[6] 15 U.S.C. 7704(a)(5).

[7] 15 U.S.C. 7704(b). The four such practices set forth in the statute are: Address harvesting, dictionary attacks, automated creation of multiple e-mail accounts, and relaying or retransmitting through unauthorized access to a protected computer or network. The Act's provisions relating to enforcement by the States and providers of Internet access service create the possibility of increased statutory damages if the court finds a defendant has engaged in one of the practices specified in section 7704(b) while also violating section 7704(a). Specifically, sections 7706(f)(3)(C) and (g)(3)(C) permit the court to increase a statutory damages award up to three times the amount that would have been granted without the commission of an aggravated violation. Sections 7706(f)(3)(C) and (g)(3)(C) also provide for this heightened statutory damages calculation when a court finds that the defendant's violations of section 7704(a) were committed ''willfully and knowingly.''

[8] Sections 7706(a) and (c) of the CAN-SPAM Act provide that a violation of the Act shall be treated as a violation of a rule issued under section 18(a)(1)(B) of the FTC Act. 15 U.S.C. 57a(a)(1)(B).

[9] 15 U.S.C. 7706(f). Specifically, the state attorneys general may bring enforcement actions for violations of section 7704(a)(1), 7704(a)(2), or 7704(d). The states may also bring an action against any person who engages in a pattern or practice that violates section 7704(a)(3), (4), or (5).

[10] 15 U.S.C. 7706(g). Section 7704(d) of the Act requires warning labels on commercial e-mail messages containing sexually oriented material. 15 U.S.C. 7704(d). In April, 2004, the Commission promulgated its final rule regarding such labels: ''Label for e-mail Messages Containing Sexually Oriented Material'' (''Sexually Explicit Labeling Rule''). 69 FR 21024 (Apr. 19, 2004). The Commission is integrating the provisions of that existing rule into the final Rule announced in this **Federal Register** Notice, renumbering certain provisions as follows: former 316.1(a) and (b) appear at 316.4(a) and (b) in the final Rule; former 316.1(c) [definitions] appears at 316.2 in the final Rule; and former 316.1(d) [severability] appears at 316.5 and applies to the entire final Rule, not only the Sexually Explicit Labeling Rule provisions.

Congress directed the Commission to issue regulations, not later than 12 months after December 16, 2003, ''defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.'' [11] The term ''primary purpose'' is incorporated in the Act's definition of the key term ''commercial electronic mail message.'' Specifically, ''commercial electronic mail message'' encompasses ''any electronic mail message the *primary purpose* of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet Web site operated for a commercial purpose).'' [12] In addition to the mandatory rulemaking regarding the determination of an e-mail message's ''primary purpose,'' CAN-SPAM also provides discretionary authority for the Commission to issue regulations concerning certain of the Act's other definitions and provisions.[13]

B. Advance Notice of Proposed Rulemaking

On March 11, 2004, the Commission published an Advance Notice of Proposed Rulemaking (''ANPR'') that solicited comment on a number of issues raised by the CAN-SPAM Act, most importantly, the definition of ''primary purpose.'' [14] In addition, the ANPR requested comment on the CAN-SPAM issues over which the Commission has discretionary rulemaking authority.[15] In response to the ANPR, the Commission received more than 13,500 comments from representatives from a broad spectrum of the online commerce industry, trade associations, individual consumers, and consumer and privacy advocates.[16] Commenters generally applauded CAN-SPAM as an effort to stem the flood of unsolicited and deceptive commercial e-mail messages that has threatened the convenience and efficiency of online commerce. Commenters also offered several suggestions for the Commission's consideration in drafting regulations to implement the Act, including the definition of ''primary purpose.''

C. Notice of Proposed Rulemaking

On August 13, 2004, the Commission published a Notice of Proposed Rulemaking (''NPRM'') proposing criteria to facilitate the determination of the primary purpose of an e-mail message.[17] In the NPRM, the Commission proposed rule provisions to divide all types of e-mail messages containing ''commercial'' content [18] into three categories: (1) Messages that contain *only* commercial content, (2) messages that contain both commercial content and content that falls within one of the categories listed in section 7702(17)(A) of the Act (''transactional or relationship content''), and (3) messages that contain both commercial content and content that is neither commercial nor ''transactional or relationship.'' Messages in the first category were considered ''single-purpose messages.'' The second and third categories were considered ''dual-purpose messages.'' For each of these categories, the Commission proposed different criteria for determining when the ''primary purpose'' of such messages was commercial.

In response to this NPRM, the Commission received 226 comments from e-mail marketers and their associations, e-mail recipients, and others interested in CAN-SPAM's application to e-mail messages.[19] Based upon the entire record in this proceeding, the final ''primary purpose'' Rule provisions the Commission hereby adopts are very similar to the proposed Rule provisions. The final Rule provisions, however, contain some minor changes from the proposed Rule provisions. These modifications, discussed in detail below, are based upon the recommendations of commenters and careful consideration of relevant First Amendment law. Commenters' recommendations that the Commission has declined to adopt in its final Rule are also discussed, along with the Commission's reasons for rejecting them.[20]

II. Discussion of the Final Rule

A. Section 316.1—Scope of Regulations

Section 316.1 of the final Rule states, ''[t]his part implements the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ('CAN-SPAM Act' [or 'the Act']), 15 U.S.C. 7701–7713.'' A number of commenters requested express findings that CAN-SPAM does not apply to their e-mail messages.[21] Section 7706(d) of the CAN-SPAM Act makes clear that the Commission has only the same jurisdiction and power under the Act as it has under the FTC Act.[22] The CAN-

[11] 15 U.S.C. 7702(2)(C). The Act authorizes the Commission to use notice and comment rulemaking pursuant to the Administrative Procedures Act, 5 U.S.C. 553, 15 U.S.C. 7711.

[12] 15 U.S.C. 7702(2)(A) (emphasis supplied). The term ''primary purpose'' is also used in the Act's definition of ''transactional or relationship message.'' 15 U.S.C. 7702(17).

[13] 15 U.S.C. 7702(17)(B); 7704(c)(1)(A)–(C); 7704(c)(2); 7711(a).

[14] 69 FR 11776 (Mar. 11, 2004).

[15] The ANPR also solicited comment on questions related to four reports that the Commission must submit to Congress: a report on establishing a ''Do Not e-mail'' registry that was submitted on June 15, 2004; a report on establishing a system for rewarding those who supply information about CAN-SPAM violations that was submitted on September 16, 2004; a report setting forth a plan for requiring commercial e-mail messages to be identifiable from their subject line to be submitted by June 16, 2005; and a report on the effectiveness of CAN-SPAM to be submitted by December 16, 2005. The comments related to the ''Do Not e-mail'' registry and the reward system are discussed in the Commission's June 15, 2004, and September 16, 2004 reports. The Commission will consider the relevant comments received in response to the ANPR in preparing the remaining reports.

[16] Comments that were submitted in response to the March 11, 2004, ANPR are available on the Commission's Web site at the following address: *http://www.ftc.gov/os/comments/canspam/index.htm*.

[17] 69 FR 50091 (Aug. 13, 2004).

[18] Based on the Act's definition of the term ''commercial electronic mail message,'' the NPRM proposed that content is ''commercial'' if it advertises or promotes a product or service. *See* 15 U.S.C. 7702(2)(A).

[19] Approximately 75 of these comments were submitted by industry representatives, 56 were submitted by consumers, and 3 were submitted by privacy groups. The remaining comments were form letters or other duplicate submissions. Appendix A is a list of the commenters and the acronyms used to identify each commenter who submitted a comment in response to the August 13, 2004, NPRM. These comments are available on the Commission's web site at the following address: *http://www.ftc.gov/os/comments/canspam2/index.htm*. References to comments are cited by the commenter's acronym.

[20] In response to the August, 13, 2004, NPRM, many commenters addressed issues relating to the Commission's discretionary rulemaking authority, in addition to addressing ''primary purpose'' rulemaking. The Commission is currently reviewing the comments addressing issues of discretionary rulemaking and is reserving action on those issues until a later time.

[21] *See, e.g.*, ASAE; Incentive; NADA; AAMFT; DMA–NF (regarding messages from nonprofit organizations); and ACA (regarding debt collection messages). In addition, Experian stated that the regulations' scope is tied to the definition of the term ''sender,'' and requested clarification of that term with respect to compliance obligations of multiple advertisers in a single commercial e-mail message. In the ANPR, the Commission sought comment on the issue of multiple-sender liability, which it identified as one possible area of discretionary rulemaking under section 7711 of the Act. The Commission staff is currently reviewing comments addressing the multiple-sender issue, as well as all comments on all other possible issues that fall within the Commission's discretionary CAN-SPAM rulemaking authority, and is reserving action on these issues until later.

[22] Under 5(a)(2) of the FTC Act, the Commission lacks jurisdiction over ''banks, savings and loan institutions described in section 18(f)(3) [of the FTC Act], Federal credit unions described in section 18(f)(4) [of the FTC Act], common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended, except as provided in Section 406(b) of said Act.'' 15 U.S.C. 45(a)(2) (footnotes omitted). In addition, the FTC does not have jurisdiction over any entity that is not ''organized to carry on business for its own profit or that of its members.'' 15 U.S.C. 44.

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SPAM Act does not expand or contract the Commission's jurisdiction or the scope of the final Rule's coverage. Limits on the FTC's jurisdiction, however, do not affect the ability of other Federal agencies, the States, or providers of Internet access service to bring actions under the Act against any entity within their jurisdiction as authorized.[23] Thus, many persons and entities not within the FTC's jurisdiction may still be subject to an enforcement action for violating the CAN-SPAM Act.

B. Section 316.2—Definitions

The proposed Rule included definitions of a number of key terms, nearly all of which were defined by references to the corresponding sections of the Act. These terms include: ''affirmative consent,'' ''commercial electronic mail message,'' ''electronic mail address,'' ''initiate,'' ''Internet,'' ''procure,'' ''protected computer,'' ''recipient,'' ''routine conveyance,'' ''sender,'' ''sexually oriented material,'' and ''transactional or relationship message.''[24] An additional term, ''character,'' not defined in the Act, had been defined in the Commission's Sexually Explicit Labeling Rule proceeding, and was included in the proposed Rule with the same definition it had been given in that earlier proceeding.[25]

In the NPRM, the Commission set forth its rationale for defining by reference those definitions included in both the Act and the Rule, stating ''that by referencing the definitions found in the Act, and any future modifications to those definitions, the Rule will accurately and effectively track any future changes made to the definitions in the Act.''[26]

None of the small number of the NPRM comments concerning the definitions challenged the Commission's proposal to incorporate by reference definitions included in the Act. Several commenters urged modifications that the Commission theoretically could effectuate under the discretionary rulemaking authority of section 7711 of the Act.[27] The largest number of comments on this section urged the Commission explicitly to exempt messages from not-for-profit entities from the definition of ''commercial electronic mail message.''[28] It is possible that a message from a nonprofit could meet the definition of ''commercial electronic mail message'' (*e.g.*, an e-mail message sent by a nonprofit hospital offering medical screening in exchange for a fee). There is no reason that recipients of such an e-mail message should forfeit the protections afforded by CAN-SPAM. Moreover, it is possible—or even likely—that messages between a nonprofit and its members could constitute ''transactional or relationship messages'' under section 7702(17)(A)(v).[29] Thus, the Commission does not believe there is adequate basis or need to create an across-the-board exemption for e-mail messages initiated by nonprofit entities.

A few comments suggested definitions of the term ''spam.''[30] In the CAN-SPAM Act, Congress set forth a regulatory scheme built around the defined terms ''commercial electronic mail message'' and ''transactional or relationship message.'' Because this structure is provided in the Act, it is unnecessary to define the term ''spam'' in the context of this rulemaking, and the Commission declines to do so.

ECFCU, without offering any definition of its own, recommended that the Commission define the phrase ''reasonably interpreting,'' used in section 316.3 of the Rule, ''to alleviate different interpretations of this term.''[31] The Commission believes that definition of this phrase is unnecessary as the plain language is sufficiently clear, especially in light of the fact that a ''reasonableness'' standard is a basic legal concept that is broadly understood.[32] Finally, two commenters, CIPL and Experian, asked the Commission to add definitions of the terms ''advertisement'' and ''promotion,'' which are used in the Act's definition of ''commercial electronic mail message.'' The Commission believes these terms are sufficiently clear and declines to add definitions of these terms.

C. Section 316.3—Primary Purpose Criteria: Four Categories of e-mail Messages With Distinct Criteria for Each

As noted above, section 7702(2)(C) of the CAN-SPAM Act directs the Commission to ''issue regulations pursuant to section 7711 of this [Act] defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.'' The term ''primary purpose'' comes into play in the Act's definition of ''commercial electronic mail message,'' which is ''any electronic mail message the *primary purpose* of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet Web site operated for a commercial purpose).''[33] Section 7702(2)(B) expressly excludes from the Act's definition of ''commercial electronic mail message'' messages that meet the definition of ''transactional or relationship message,''[34] which also

Finally, the FTC does not have jurisdiction over the business of insurance to the extent that such business is regulated by State law. *See* section 2 of the McCarran-Ferguson Act, 15 U.S.C. 1012(b).

[23] Section 7706(b) and (c) of the CAN-SPAM Act authorize Federal agencies other than the FTC to enforce the Act against various entities outside the FTC's jurisdiction.

[24] Proposed Rule 316.2(a), (c)–(n).

[25] Proposed Rule 316.2(b).

[26] 69 FR at 50094.

[27] A handful of comments touched on the definition of ''sender,'' advocating clarification of the multiple-sender issue raised in the ANPR. Experian; NRF; Adknowledge (alternatively recommending clarification of the definition of ''transactional or relationship message''); ESPC (recommending that the definition of ''sender'' be addressed in this proceeding because the term is related to the ''standard associated with primary purpose''). MBA recommended that the Commission ''explicitly state that verbal consent is sufficient to comply with the definition of ''affirmative consent'' and that definition's requirement for a ''clear and conspicuous'' requirement.'' Baker urged the Commission to expressly define expiration/renewal notices as transactional. As noted in the NPRM, the Commission anticipates addressing issues of discretionary rulemaking, including the definitions of the terms ''sender,'' ''affirmative consent,'' and ''transactional or relationship message'' in a future **Federal Register** notice, and does not address them here.

[28] *See, e.g.*, AE; Incentive; Independent (requesting clarification in the definition of ''transactional or relationship messages'' that e-mails sent by a nonprofit to its base constituency will not be considered commercial e-mail); ASAE; AAMFT; NAEDA.

[29] These messages will only be considered ''commercial electronic mail messages,'' and thus subject to greater regulation than transactional or relationship messages, if (1) a recipient reasonably interpreting the subject line of the message would likely conclude that the message advertises or promotes a commercial product or service, or (2) the transactional or relationship content does not appear, in whole or in substantial part, at the beginning of the body of the message.

[30] Schomaker; Cleaver; Anonymous; Dickert.

[31] ECFCU.

[32] *See, e.g.*, the reasonableness element of the Commission's deception standard as articulated in *Cliffdale Assocs., Inc.,* (Deception Statement) 103 F.T.C. 110 (1984): ''We examine the practice from the perspective of a consumer acting reasonably in the circumstances.''

[33] 15 U.S.C. 7702(2)(A) (emphasis supplied). The Commission's authority to establish ''primary purpose'' criteria does not include the authority to modify the Act's definition of ''commercial.''

[34] Section 7702(17)(A) of the Act defines a ''transactional or relationship message'' as ''an electronic mail message the primary purpose of which is—

(i) To facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

(ii) To provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

(iii) To provide—

(I) Notification concerning a change in the terms or features of;

(II) Notification of a change in the recipient's standing or status with respect to; or

incorporates the term ''primary purpose.'' Generally, CAN-SPAM applies only to messages that fall within the Act's definition of ''commercial electronic mail message.'' [35]

In the August 13, 2004, NPRM, the Commission's proposed criteria to facilitate the determination of when an e-mail message has a commercial primary purpose contemplated three categories of e-mail messages containing ''commercial'' content and applied different criteria to each category. The three categories proposed were: (1) e-mail messages that contain *only* commercial content, (2) e-mail messages that contain both commercial content and content that falls within one of the categories listed in section 7702(17)(A) of the Act (''transactional or relationship content''),[36] and (3) e-mail messages that contain both commercial content and content that is neither commercial nor ''transactional or relationship.'' The first category covered those e-mail messages with only commercial content—''single-purpose messages.'' The second and third categories covered ''dual-purpose messages.'' Commenters supported the proposal's distinction between single-purpose and dual-purpose e-mail messages, and between the two types of dual-purpose e-mail messages.[37] The Commission retains the three categories of messages containing commercial content in the final Rule's primary purpose criteria, and adds a fourth category—e-mail messages containing *only* transactional or relationship content—and provides a criterion for determining the primary purpose of such e-mail messages.[38]

The final Rule, however, slightly modifies the proposed Rule's description of what constitutes ''commercial'' content. Under the proposed Rule, ''commercial content'' was described as ''content that advertises or promotes a product or service.'' [39] This description is based on the Act's definition of ''commercial electronic mail message.'' Under the Act's definition, a commercial e-mail message is an e-mail message ''the primary purpose of which is the *commercial* advertisement or promotion of a *commercial* product or service (including content on an Internet Web site operated for a commercial purpose).'' [40] The key concept from the Act's definition—does the e-mail message advertise or promote a product or service?—was incorporated in the proposal but the repeated references to the term ''commercial'' were omitted.

Three commenters argued that the Commission had erred in dropping these additional inclusions of the term ''commercial'' from its proposed criteria, and urged the Commission to rectify this in its final Rule.[41] These commenters claimed that failing to include these references from the text of the Act could inappropriately broaden the scope of the Act by including individuals sending one e-mail message one time to a single recipient to sell a personal item.[42] These commenters also argued that omitting the word ''commercial'' would improperly bring within the Act's reach ''electronic mail messages that do not promote commercial products or services,'' such as messages from trade groups promoting seminars or other gatherings.[43] Contrary to these commenters' views, however, CAN-SPAM may apply to a trade association's e-mail messages promoting a seminar because a seminar may be considered a ''commercial product or service'' if attendees must pay an admission charge. Nevertheless, as will be discussed in detail below, a trade association's e-mail messages to its members or donors are likely ''transactional or relationship messages'' under the Act even if the messages consist primarily of the commercial advertisement or promotion of a commercial product or service. Commenters offered no other situations where adding the word ''commercial'' before ''advertisement or promotion'' and ''product or service'' alters the definition proposed in the NPRM.

The Commission is persuaded by these comments that the language of the Rule should adhere more closely to the language of the Act to avoid the possibility of overbreadth. Reviewing the matter in light of the comments, the Commission has concluded that the repeated inclusion of the modifying word ''commercial'' in section 7702(2)(A) of the Act is not merely tautological, but evidences an intention to ensure that the CAN-SPAM regulatory scheme would not reach isolated e-mail messages sent by individuals who are not engaged in commerce,[44] but nevertheless seek to sell something to a friend, acquaintance, or other personal contact.[45] To be consistent with the text of CAN-SPAM, under the final Rule, ''commercial'' content is ''the commercial advertisement or promotion of a commercial product or service.'' [46]

(III) At regular periodic intervals, account balance information or other type of account statement with respect to, a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender;

(iv) To provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or

(v) To deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.''

[35] One provision, section 7704(a)(1), which prohibits false or misleading transmission information, applies equally to ''commercial electronic mail messages'' and ''transactional or relationship messages''; otherwise, CAN-SPAM's prohibitions and requirements cover only ''commercial electronic mail messages.''

[36] *See* note 34 above.

[37] *See, e.g.*, AAM (with some reservations); BMI; CASRO; ICOP; Reed; SIIA (asking for more guidance). *But see* Adknowledge; SIA; State Farm (claiming that the proposal's distinctions are inconsistent with the text of the Act and could result in improper regulation of messages that should be outside the scope of the Act). Other commenters argued that one standard should apply to all dual-purpose messages. *See, e.g.*, DoubleClick; ESPC.

[38] *See* NBC; NetCoalition; NRF (advocating criteria for messages containing only transactional or relationship content). The Commission declines to adopt a fifth category for messages containing commercial content, transactional or relationship content, and content that is neither commercial nor transactional or relationship. *See* Experian; NBC. The criteria for messages containing both commercial and transactional or relationship content apply to messages of this type.

[39] Proposed Rule 316.3(a)(1). 69 FR at 50106.

[40] 15 U.S.C. 7702(2)(A) (emphasis supplied).

[41] *See* MPAA; Schwartz; SIA. In addition, many comments submitted by nonprofit entities argued that the Act's repeated references to ''commercial'' in the ''commercial electronic mail message'' definition reflect Congress's intent to exempt messages from nonprofits. *See, e.g.*, AE; Incentive. The final Rule's application to messages sent by nonprofit entities is discussed in greater detail below. As the Commission explained in the NPRM, the use of the term ''commercial'' in the Act shows intent to regulate messages whose primary purpose is to *sell* something, as distinguished from ''transactional or relationship messages'' and other non-commercial communications. 69 FR at 50100.

[42] *See* MPAA; Schwartz; SIA.

[43] Schwartz; SIA. *See also* MPAA.

[44] The Random House College Dictionary defines ''commercial'' as ''of, pertaining to, or characteristic of commerce; engaged in commerce.'' It defines ''commerce'' as ''an interchange of goods or commodities, especially on a large scale; trade; business.'' *Random House College Dictionary* 270 (Revised edition unabridged 1980).

[45] The Act's coverage of single business-to-business e-mail messages is an issue that several commenters addressed. The text of the Act has no business-to-business exemption and does not establish a minimum number of e-mail messages that must be sent before the Act applies. This may invite an interpretation that it regulates such messages as commercial, even when they are not sent in bulk. Nevertheless, a number of commenters advanced equitable arguments for an exemption from CAN-SPAM for isolated business-to-business commercial e-mail messages. *See, e.g.* MBNA. The Commission has not made any determination regarding this issue, which it intends to review when addressing discretionary rulemaking issues.

[46] *See* 15 U.S.C. 7702(2)(A). CAN-SPAM's definition of ''commercial'' content does not modify sections 4 and 5 of the FTC Act, which define ''commerce'' and establish the Commission's authority to prevent, among other things, ''unfair or

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According to CAN-SPAM's definition of ''commercial electronic mail message,'' ''a commercial product or service'' includes ''content on an Internet Web site operated for a commercial purpose.''[47] By incorporating specifically the Act's definition of ''commercial electronic mail message,'' the final Rule also incorporates that definition's inclusion of ''content on an Internet Web site operated for a commercial purpose.'' Thus, in the text of the final Rule, and throughout this **Federal Register** Notice, every reference to ''commercial'' content or ''a commercial product or service'' includes ''content on an Internet Web site operated for a commercial purpose.'' Therefore, an e-mail message's reference or hyperlink to the address of a Web site that is operated for a commercial purpose is ''commercial'' content under the Act and the final Rule.

1. Section 316.3(a)(1)—Criterion for E-mail Messages That Contain Only Commercial Content

In the NPRM, the Commission proposed that ''if an e-mail message contains only content that advertises or promotes a product or service ('commercial content'), then the 'primary purpose' of the message would be deemed to be commercial.'' Only a few commenters addressed this component of the proposed primary purpose criteria, and those commenters generally supported the Commission's approach.[48] Thus, the Commission adopts a final Rule provision that retains the proposed criterion for determining the primary purpose of an e-mail message containing only commercial content. As was explained above, however, the final Rule's version of this criterion slightly modifies the proposal's description of ''commercial content.'' In the final Rule, commercial content is ''the commercial advertisement or promotion of a commercial product or service.'' Under section 316.3(a)(1) of the final Rule, if an e-mail message contains only commercial content, the ''primary purpose'' of the message shall be deemed to be commercial.

2. Section 316.3(a)(2)—Criteria for e-mail Messages That Contain Both Commercial Content and ''Transactional or Relationship'' Content

In the NPRM, the Commission proposed that section 316.3(a)(2) would set out criteria for determining the primary purpose of messages containing both commercial content and transactional or relationship content. The proposal was that this type of dual-purpose message would have a commercial primary purpose if: ''(1) A recipient reasonably interpreting the subject line of the electronic mail message would likely conclude that the message advertises or promotes a product or service; or (2) The electronic mail message's [transactional or relationship content] does *not* appear at or near the beginning of the message.''[49] These proposed criteria prompted a substantial number of comments. The Commission has determined to adopt final Rule provisions that retain both criteria, but to make slight modifications to each one. Under section 316.3(a)(2) of the final Rule, if an electronic mail message contains both commercial content[50] and transactional or relationship content, then the primary purpose of the message shall be deemed to be commercial if: (1) A recipient reasonably interpreting the subject line of the electronic mail message would likely conclude that the message contains the commercial advertisement or promotion of a commercial product or service; or (2) the electronic mail message's transactional or relationship content does *not* appear, in whole or in substantial part, at the beginning of the body of the message.[51] In other words, for such a message to be deemed to have a ''transactional or relationship'' primary purpose, the subject line must *not* contain a reference to a commercial advertisement or promotion of a commercial product or service *and* the transactional or relationship content *must* appear in whole or in substantial part at the beginning of the body of the message. Both criteria must be fulfilled if a message is to be deemed to have a purpose that is primarily transactional or relationship.

a. Sections 316.3(a)(2)(i) and (3)(i)—The Function of the Subject Line in Determining the Primary Purpose of e-mail Messages Containing Both Commercial Content and Transactional or Relationship Content, or Containing Both Commercial Content and Content That Is Neither Commercial Nor Transactional or Relationship

In the NPRM, the Commission stated: ''[T]he subject line is important because consumers reasonably use the information it contains to decide whether to read a message or delete it without reading it. For this reason, *bona fide* e-mail senders likely use the subject line to announce or provide a preview of their messages. These e-mail senders, when they are advertising or promoting a product or service, will likely highlight that fact in their subject lines so that recipients may decide whether to read the messages.''[52] The Commission continues to believe that the subject line is a reliable indicator of an e-mail message's primary purpose. The Commission also believes that the subject line criterion has the substantial benefit of being a clear test for e-mail senders to apply to their messages. Several commenters supported the subject line criterion.[53] Visa supported independent evaluation of the subject line ''because it assists consumers in deciding whether or not to read a particular e-mail message.'' Visa agreed that *bona fide* e-mail senders ''will highlight in the subject line the principal purpose of the e-mail message,'' although it recommended substituting a different criterion in place of the proposed net impression standard.[54] NCL stated that the subject line is the first thing a recipient sees and is often the sole basis on which a recipient decides whether to open the

deceptive acts or practices in or affecting commerce.'' 15 U.S.C. 44 and 45.

[47] 15 U.S.C. 7702(2)(A).

[48] *See* CASRO; ESPC; Keyspan; NCL; Visa.

[49] Proposed Rule 316.3(a)(2). 69 FR at 50106.

[50] As explained above, the final Rule's description of ''commercial'' content has been modified to be consistent with the Act's text. Thus, commercial content is ''the commercial advertisement or promotion of a commercial product or service.''

[51] Several commenters urged the Commission to adopt two additional categories of e-mail messages that may be regulated by CAN-SPAM: messages consisting solely of ''transactional or relationship'' content, and messages that contain commercial content, transactional or relationship content, and content that does not belong in either category (*e.g.*, informational content). *See* Experian; NBC; NetCoalition; NRF. The Commission has determined to add a fourth category of messages addressed in its primary purpose criteria: those containing only transactional or relationship content. That category and its criterion are discussed below. The Commission declines to adopt a fifth category for messages containing commercial content, transactional or relationship content, and content that is neither commercial nor transactional or relationship. Instead, the Commission has determined that such messages will be evaluated using the criteria for messages containing both commercial content and transactional or relationship content. Thus, the transactional or relationship content, which Congress has identified as especially important to recipients, must appear, in whole or in substantial part, at the beginning of the body of the message for the message not to be deemed to have a commercial primary purpose.

[52] NPRM, 69 FR at 50095 (footnotes omitted).

[53] *See* CASRO (requesting additional guidance); NCL; Reed; Visa.

[54] Visa. While generally supportive of the evaluation of the subject line, Visa recommended that the Commission adopt a test for determining the primary purpose of an e-mail message that would evaluate whether the commercial content in an e-mail message was ''more important than all other purposes,'' and ''but for'' the inclusion of such content, the message would not have been sent.

message or delete it.[55] Reed Elsevier, a publishing and information company, stated that this criterion ''while subjective, provide[s] * * * guidance for compliance with the Act.'' For these reasons, the Commission has adopted a subject line criterion in the final Rule for all dual-purpose e-mail messages that closely tracks the proposed Rule's subject line criterion.[56]

Some commenters claimed that the subject line criterion did not provide enough guidance regarding how CAN-SPAM would apply to e-mail messages that contained commercial content but did not refer to this commercial content in the subject line.[57] Some commenters warned that this criterion should not—indeed, could not—*require* e-mail messages containing commercial content to refer to that content in the subject line.[58] The subject line criterion does not require senders to use a subject line that refers to the message's commercial content.[59] This is necessarily a fact-specific analysis, and a dual-purpose message may use a subject line that is not deceptive and yet does not refer to commercial content.

It is worth noting, however, that section 7704(a)(2) of CAN-SPAM prohibits the use of ''a subject heading * * * [that] would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message (consistent with the criteria used in enforcement of section [5 of the FTC Act]).''[60]

CAN-SPAM's focus on subject lines that misrepresent the content or subject matter of the message is in accord with case law developed under section 5 of the FTC Act with respect to deceptive ''door-openers.''[61] The subject line of an e-mail message serves as a door-opener—an initial contact between a sender and a recipient that typically makes an express or implied representation about the purpose of the contact. Before the recipient views the body of an e-mail message, he or she typically may view the subject line that, as the designation ''subject line'' implies, announces what the e-mail message concerns. Some senders may be tempted to use misrepresentations in the subject line to induce recipients to open their messages.[62] These senders would be well advised that CAN-SPAM prohibits using the subject line as an initial contact with consumers to get their attention by misrepresenting the purpose of the contact.

(1) Commenters' Opposition to the Subject Line Criterion in Determining the Primary Purpose of e-mail Messages Containing Both Commercial Content and Transactional or Relationship Content

In response to the Commission's proposal, many comments from e-mail senders opposed any standard by which the subject line alone could be the basis for determining the primary purpose of an e-mail message.[63] First, many of these commenters objected to the subject line criterion's focus on a recipient's reasonable interpretation of the subject line; they claimed this was an ''unnecessarily subjective'' standard.[64] These commenters argued that it would be difficult, costly, and time-consuming to determine how recipients would interpret the subject lines of the commenters' messages.[65] Although senders will need to spend some time evaluating their message's subject line, the Commission believes that these commenters exaggerate the difficulty and expense involved in determining whether recipients will likely interpret the subject line as indicating a message with commercial content. A subject line that indicates that the message contains a commercial advertisement or promotion of a commercial product or service will likely lead a recipient to conclude that the message is commercial, not ''transactional or relationship.''[66] A

[55] *But see* DoubleClick (stating that e-mail recipients rely more on the from line than the subject line when deciding whether to read a message). DoubleClick's data show that one-third of e-mail recipients surveyed consider the subject line to be the most important factor in deciding whether to open a permission-based e-mail. The Commission considers this data as support for its use of the subject line in its primary purpose criteria. It is reasonable to presume that an even greater percentage of consumers rely most on the subject line when deciding whether to open unsolicited messages from unfamiliar senders, when the from line is less useful to recipients.

[56] As explained above, the final Rule's description of ''commercial content'' has been modified to be consistent with the Act's text. Thus, commercial content is ''the commercial advertisement or promotion of a commercial product or service.''

[57] *See, e.g.*, Experian; KeySpan; NetCoalition.

[58] *See* Associations; CBA; DMA; Experian; PMA; Wells Fargo. Section 7711(b) of the Act, cited by these commenters, prohibits the Commission from ''establish[ing] a requirement pursuant to section 7704(a)(5)(A) * * * to include any specific words, characters, marks, or labels in a commercial electronic mail message, or to include the identification required by section 7704(a)(5)(A) * * * in any particular part of such a mail message (such as the subject line or body).'' This criterion, however, does not require any specific content in the subject line of e-mail messages, and is plainly consistent with the Act.

[59] Despite requests from CBA and DMA to add to the Rule's text a statement explaining this point, the Commission believes it unnecessary. *See also* NetCoalition (proposing three tests—''close alignment,'' ''net impression,'' and ''deceptiveness''—for determining when a dual-purpose message's subject line should refer to commercial content). These tests do not add materially to the criterion adopted in the final Rule.

[60] Thus, CAN-SPAM specifically applies to the subject line of covered e-mail messages the deception jurisprudence the Commission has developed under section 5(a) of the FTC Act. 15 U.S.C. 45(a). The express language of section 7704(a)(2) of CAN-SPAM tracks the deception standard developed in the Commission's cases and enforcement statements, thereby prohibiting subject line content that is likely to mislead a consumer acting reasonably under the circumstances about a material fact regarding the content or subject matter of the message. *Cliffdale Assocs., Inc.* (Deception Statement), 103 F.T.C. 164–5. The framework for analyzing alleged deception is explicated in an Appendix to this decision, reprinting a letter dated Oct. 14, 1983, from the Commission to The Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (1984) (''Deception Statement''). Under this framework, actual deception need not be shown, only that a representation, omission, or practice is likely to mislead. *Id.* at 176. *Thiret* v. *FTC,* 512 F.2d 176, 180 (10th Cir. 1975); *Ger-Ro-Mar, Inc.* v. *FTC,* 518 F.2d 33, 36 (2d Cir. 1975); *Resort Car Rental Sys., Inc.* v. *FTC,* 518 F.2d 962, 964 (9th Cir. 1975). The ''acting reasonably under the circumstances'' aspect of the analysis considers the representation from the perspective of the ordinary consumer to whom it is directed. *Cliffdale* at 177–8. A material fact ''is one which is likely to affect a consumer's choice of or conduct regarding a product. In other words, it is information that is important to consumers.'' *Id.* at 182 (footnotes omitted). Note, however, that section 7704(a)(6) of the Act establishes a definition of ''materially'' that is distinct from, but consistent with, the definition articulated in the Deception Statement. The section 7704(a)(6) definition applies only to section 7704(a)(1), which prohibits header information that is ''materially false or materially misleading.''

[61] ''[W]hen the first contact between a seller and a buyer occurs through a deceptive practice, the law may be violated even if the truth is subsequently made known to the purchaser.'' *Cliffdale Assocs.* (Deception Statement), 103 F.T.C. at 180. *See also Carter Products, Inc.* v. *FTC,* F.2d 821, 824 (5th Cir. 1951); *Exposition Press, Inc.* v. *FTC,* 295 F.2d 869, 873 (2d. Cir. 1961), *cert. denied,* 370 U.S. 917 (1962); *National Housewares, Inc.,* 90 F.T.C. 512, 588 (1977); *Resort Car Rental,* 518 F.2d at 964; *Encyclopaedia Britannica, Inc.,* 87 F.T.C. 421, 497 (1976), *aff'd sub nom. Encyclopaedia Britannica, Inc.* v. *FTC,* 605 F.2d 964 (7th Cir. 1979), *cert. denied*, 445 U.S. 934 (1980).

[62] *See, e.g., FTC* v. *Brian Westby, et al.*, Case No. 03 C 2540 (N.D. Ill. Amended Complaint filed Sept. 16, 2003) (FTC alleged in part that Defendants used deceptive subject lines to expose unsuspecting consumers to sexually explicit material).

[63] *See, e.g.*, ESPC; MBNA; NAR; NBC; NetCoalition; SIIA. *See also* TrustE (stating that using the subject line as an independent criterion would ''transform the subject line from a versatile means of communication with customers into a mere rigid legal compliance mechanism,'' and arguing that independent evaluation of the subject line is ''superfluous'' because it is highly improbable, though admittedly possible, that commercial content may appear in the subject line and body of an e-mail message, or only in the body of an e-mail message). The Commission believes that the subject line criterion uses what is already true about subject lines—that they highlight the content of a message and that legally they cannot be deceptive—to facilitate the determination of an e-mail message's primary purpose.

[64] MPAA. *See also* CBA; Courthouse; Experian; ICC; MBA; MBNA; SIIA; Visa; Wells Fargo.

[65] *See, e.g.*, Baker; Experian; MPAA.

[66] Applying the Act's definition of ''commercial electronic mail message,'' a subject line also refers to commercial content when it refers to the

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subject line that refers only to one of the categories listed in the Act's definition of ''transactional or relationship message'' would not lead a recipient to conclude that the message is commercial.[67] The Commission believes that this standard provides the necessary guidance to senders of dual-purpose e-mail messages so that they can, if they wish, compose their messages so that they will be regulated as transactional or relationship messages, and not as commercial messages.

A second group of commenters objecting to the subject line criterion argued that it fails as a ''primary purpose'' test because it looks at only one component of an e-mail message.[68] According to these commenters, any ''primary purpose'' test must look at the e-mail message as a whole. The Commission believes that the criteria articulated in section 316.3(a)(2) *do* give appropriate consideration to all relevant elements of an e-mail message. The subject line stands out as a separate part of a message that serves as a preview of the body of the message. As such, it is appropriate to tailor the criteria to accommodate this basic feature of e-mail communication. Congress required the Commission to ''defin[e] the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.'' [69] The Commission's use of the subject line as one criterion for determining an e-mail message's primary purpose is consistent with this mandate. e-mail recipients can and do rely on a message's subject line as a preview of what the message is about.[70] CAN-SPAM's prohibition on deception in subject lines ensures the reliability of the subject line as a signal of a message's purpose.[71] Because *bona fide* e-mail senders likely use the subject line to highlight the content of their messages, and because CAN-SPAM mandates honest subject lines, then it is proper—and efficient—to conclude that one way to determine the primary purpose of an e-mail message is by looking at the subject line.

A third group of commenters argued that, if the Commission were determined to use the subject line in its criteria, it must look at whether the *primary purpose* of the subject line is commercial.[72] Some commenters in this group argued that this criterion should not look at whether a recipient reasonably interpreting the subject line ''would likely conclude that the message contains the commercial advertisement or promotion of a commercial product or service,'' but should instead look at whether such recipient would likely conclude that the primary purpose *of the message* is commercial.[73] Given the limited space with which e-mail senders operate in the subject line, the Commission believes it is reasonable and practical for the criterion to consider whether a recipient reasonably interpreting the subject line would likely conclude that the message *contains* commercial content, not whether he or she would likely draw any conclusions about the message's *primary purpose.* It would be unworkable to adopt a test that required e-mail senders to weigh the relative importance of a subject line's different references. As explained above, CAN-SPAM ensures that the subject line is a non-deceptive, reliable indicator of an e-mail message's content. If an e-mail sender wants to send a message that will be treated under CAN-SPAM as a transactional or relationship message, the subject line criterion provides a roadmap to arrive at that result (*i.e.*, place only references to transactional or relationship content in the subject line). The same is true of the ''placement'' criterion discussed immediately below. Before e-mail senders initiate any message, they can know—and control—how their message will be regulated.

A fourth group of commenters claimed the subject line is not a reliable indicator because Internet service providers, by limiting the length of the subject line actually presented to a recipient, may alter how a subject line appears on a recipient's computer in a manner that is beyond the sender's control.[74] These commenters were concerned that, due to such alteration, a recipient could conclude that the subject line of an e-mail message indicated that the message contained commercial content when the subject line did not so indicate when it left the sender's computer. According to the subject line criterion, that conclusion would mean that a dual-purpose message has a commercial primary purpose. These commenters submitted nothing that shows that, when a subject line refers initially to transactional or relationship content, the subject line could appear to refer to commercial content because of subsequent alteration by a recipient's Internet service provider. Although it may be possible for a subject line to be cut short because of the recipient's e-mail program, it is unlikely that this would change a subject line from referring to transactional or relationship content to referring to commercial content.[75] Moreover, one of the commenters raising this objection acknowledged that senders already take into account ISPs' subject line character limitations.[76] Thus, the Commission has determined not to change the subject line criterion.[77]

commercial advertisement or promotion of ''content on an Internet Web site operated for a commercial purpose.'' 15 U.S.C. 7702(2)(A).

[67] One commenter, Baker, stated that it would seem ''intolerable'' for an e-mail sender to have to ''worry about the distinction'' between a subject line that indicates that a recipient's periodical subscription is about to expire (which would refer to transactional or relationship content) and a subject line that packages such a notification with a reference to a sales pitch to renew the subscription (which would refer to both commercial content and transactional or relationship content). Although CAN-SPAM provides that a notice about subscription status is transactional or relationship content, it does *not* establish that an offer to renew the subscription constitutes transactional or relationship content. As a result, the Act itself dictates this narrow distinction. It is therefore important to examine the subject line to determine the *primary* purpose of a dual-purpose message that refers to both subscription status and a renewal sales pitch. Senders may include the sales pitch in both the subject line and the message, but because this message would have a commercial primary purpose, the sender would have to give recipients an opportunity to opt out of future sales pitches.

[68] *See, e.g.*, ESPC; MBNA; MPAA.

[69] 15 U.S.C. 7702(2)(C).

[70] *See, e.g.*, NCL.

[71] 15 U.S.C. 7704(a)(2).

[72] *See* Associations; CBA; Experian; PMA; Wells Fargo.

[73] *See* BofA; Mastercard; NBC.

[74] *See* DoubleClick; ESPC; TRUSTe.

[75] If a long subject line refers to both transactional or relationship content and commercial content, the recipient would already reasonably conclude that the message contains an ad (and therefore is commercial). Therefore, if a portion of this long subject line is cut off, it would not change the conclusion.

[76] *See* TRUSTe.

[77] MPAA asserted a somewhat related argument that the subject line criterion should not apply when the original recipient of an e-mail message replies to or forwards that message. Specifically, MPAA posed the hypothetical of a message that is initially purely commercial (*e.g.*, a sales pitch) with a ''commercial'' subject line, but that subsequently takes on transactional or relationship content (*e.g.*, completion of the transaction introduced by the sales pitch) as the two parties to the message reply to each other. According to MPAA, the subject line criterion should not render such a message commercial even if the message retains its original ''commercial'' subject line. The Deception Statement, which is a lodestar of the subject line criterion's focus on ''a recipient reasonably interpreting the subject line,'' states ''when representations * * * are targeted to a specific audience, the Commission determines the effect of the practice on a reasonable member of that group.'' *See Cliffdale Assocs.* (Deception Statement), 103 F.T.C. at 178, 180. That passage of the Deception Statement provides guidance to senders of messages described by MPAA. While the subject line criterion still applies to business-to-business messages that are replied to or forwarded, senders of such messages may be able to show that a recipient reasonably interpreting the subject line of the message would not likely conclude that the message contains commercial content.

b. Section 316.3(a)(2)(ii)—''Placement'' Criterion for e-mail Messages With Both Commercial Content and Transactional or Relationship Content

Under the Commission's second proposed criterion governing e-mail messages containing both commercial content and transactional or relationship content, this type of dual-purpose message would have a commercial primary purpose if the transactional or relationship content ''does *not* appear at or near the beginning of the message.'' [78] Several senders supported this test because it provides clear, objective guidance to marketers.[79] Others opposed it, typically because they felt it does not provide sufficient guidance, especially with respect to the ''at or near the top'' element.[80] A second criticism from a small number of commenters opposed to this approach was that they preferred to be able to provide commercial content first without having their messages be considered commercial e-mail messages.[81] In the final Rule, in response to comments addressing this approach and to provide the clearest standard, the Commission has modified the standard so that an e-mail message will be deemed to have a commercial primary purpose if the transactional or relationship content ''does *not* appear, in whole or in substantial part, at the beginning of the body of the message.'' [82] The Commission believes that this placement test provides an objective standard for e-mail senders to comply with, allows for flexibility in message design, and ensures that recipients receive the most important content of a dual-purpose message first.[83] e-mail senders are not required to *complete* their presentation of transactional or relationship content before providing any commercial content. Once they begin their message with at least some substantial transactional or relationship content, they may then provide commercial content. Use of the term ''substantial'' in this criterion does *not* refer to volume; there is no minimum number of ''transactional or relationship'' characters that must appear at the beginning of the body of the message. Rather, the term ''substantial'' refers to the *nature* of the content. To satisfy this criterion, the transactional or relationship content that appears at the beginning must be something recognizable as transactional or relationship content. For example, if a message's transactional or relationship content is account balance information pursuant to section 7702(17)(A)(iii), a statement providing the recipient's current balance would be substantial, and additional related information (*e.g.*, recent account activity) could be provided below commercial content. On the other hand, merely stating ''Your account'' at the beginning of the message would not be sufficiently substantial. Under this standard, recipients of these messages will be alerted to important transactional or relationship content without having to first wade through advertising.[84]

Finally, in referring to ''transactional or relationship'' content, the proposed Rule used the phrase ''content that *pertains to* one of the functions listed'' in a portion of the rule that tracked, verbatim, the statutory provision that sets out the transactional or relationship categories [15 U.S.C. 7702(17)]. The final Rule uses the narrower and more precise formulation ''transactional or relationship content as set forth in paragraph (c) of this section.''

c. Commenters' Proposals for Determining the Primary Purpose of Messages Containing Both Commercial Content and Transactional or Relationship Content

In the NPRM, the Commission asked commenters to propose alternative criteria to determine the primary purpose of messages containing commercial content and transactional or relationship content. Commenters responded with several proposals that the Commission had already considered and rejected in the NPRM. Some commenters also proposed modifications to the Commission's existing proposal.

(1) Comments Arguing That the Inclusion of *Any* Transactional or Relationship Content Should Preclude Determination That the Message Has a Commercial Primary Purpose

Approximately 30 comments submitted by e-mail senders argued that dual-purpose messages *necessarily* do *not* have a commercial primary purpose if they contain certain transactional or relationship content, such as billing statements, legally required content, content sent in response to a request from the recipient, ''primarily editorial'' content, and subscription renewals.[85] One commenter simply stated that a message is a ''transactional or relationship message'' if it contains any transactional or relationship content regardless of where it is positioned.[86]

CAN-SPAM clearly rejects the hard-and-fast approach advocated by these commenters, which is that any modicum of transactional or relationship content ought to place even an overwhelmingly commercial message beyond the ambit of the modest requirements that the Act imposes on commercial messages. The Act distinguishes between messages the ''primary purpose'' of which is ''commercial'' and messages the ''primary purpose'' of which is ''transactional or relationship.'' [87] The concept that some analysis is necessary to determine the ''primary purpose'' of e-mail messages that blend commercial with transactional or relationship content is therefore embodied in the Act. Thus, the text of the Act itself contradicts the commenters' argument that the presence of transactional or relationship content in an e-mail message automatically prevents an e-mail message from being ''commercial.'' The Commission therefore declines to adopt a final Rule that would treat dual-purpose messages as transactional or relationship messages simply because they include any amount of transactional or relationship content appearing anywhere in the message.[88]

[78] NPRM, 69 FR at 50106. Of course, if a recipient reasonably interpreting the subject line of such a message would likely conclude that the message contains the commercial advertisement or promotion of a commercial product or service, the message would be deemed to have a commercial primary purpose regardless of where in the message the transactional or relationship content appears.

[79] *See* Keyspan; MBA; MBNA; VCU.

[80] *See, e.g.*, DoubleClick; Experian. Commenters also asked how this standard would apply to messages with ''side-by-side'' presentation of commercial content and transactional or relationship content. *See* NRF; MPAA.

[81] *See, e.g.*, MPAA.

[82] Three commenters requested that the Commission specify that this criterion looks at placement at the beginning *of the body* of the message (as opposed to simply ''the beginning of the message,'' which was proposed in the NPRM). *See* Experian; MBNA; NBC. For clarity, the Commission accepts this suggestion.

[83] CAN-SPAM's definition of ''transactional or relationship message'' includes specific categories of messages that Congress determined to be ones that consumers want to receive. These categories include vital information such as bank account statements, product recalls, transaction confirmations, and warranty information.

[84] A side-by-side presentation of commercial and transactional or relationship content could satisfy this standard.

[85] *See, e.g.*, AeA; Associations; Baker; BofA; CBA; DMA; ERA; MPA; PMA; Schwartz; SIIA; State Farm; Time Warner; Wells Fargo.

[86] Schwartz.

[87] *See* 15 U.S.C. 7702(2); 7702(17).

[88] Similarly, several commenters expressed concern that the Commission not prohibit or discourage dual-purpose messages. *See* DoubleClick; Experian; NBC; NRF; Visa. This concern is unfounded. The Commission does not have the authority to prohibit dual-purpose messages, and the final Rule's criteria for messages containing both commercial content and transactional or relationship content do nothing to

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A number of commenters requested guidance regarding CAN-SPAM's regulation of periodicals (such as newsletters and catalogs) delivered via e-mail, many of which contain information and advertising.[89] The starting point to analyze the impact of CAN-SPAM on a periodical is to consider whether it is sent pursuant to a subscription. When a recipient subscribes to a periodical delivered via e-mail, then transmission of that periodical to that recipient falls within one of the ''transactional or relationship message'' categories. Specifically, it constitutes delivery of ''goods or services * * * that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.'' [90] This is true regardless of whether the periodical consists exclusively of informational content or combines informational and commercial content.[91]

When a sender delivers an unsolicited newsletter or other periodical via e-mail, and there is no subscription, the situation is materially different for purposes of CAN-SPAM than when such content is delivered with the consent of the recipient. In such a scenario, the content likely would not be ''transactional or relationship'' within the meaning of section 7702(17)(A)(v). Instead, if the message contains both commercial content and content that is neither commercial nor transactional or relationship, the criteria set out in section 316.3(a)(3) would apply. Under that standard, discussed in detail below, an e-mail message will be deemed to have a commercial primary purpose if either: (1) A recipient reasonably interpreting the subject line would likely conclude that the message contains the commercial advertisement or promotion of a commercial product or service; or (2) a recipient reasonably interpreting the body of the message would likely conclude that the primary purpose of the message is the commercial advertisement or promotion of a commercial product or service.

(2) Comments Discussing a ''Primary Purpose'' Criterion Based on Sender's Intent, Such as a ''But for'' Standard

Some commenters responding to the NPRM advocated ''primary purpose'' criteria based on the sender's intent.[92] These commenters, repeating arguments the Commission rejected in the NPRM,[93] claimed that a standard based on the sender's intent would be an objective test for marketers.[94] The Commission disagrees that a sender-intent standard is objective. To the contrary, the sender-intent approach is entirely subjective. As NCL stated: ''[N]either recipients nor law enforcement authorities can look into the minds of senders in order to prove whether they intended the messages to be primarily for commercial or other purposes.'' [95] The Commission agrees with NCL, and notes that a ''sender intent'' standard would create a difficult problem of proof in law enforcement actions. Such a standard presents the potential for a loophole for spammers, which could nullify CAN-SPAM's protections for e-mail recipients. The Commission's criteria obviate such a loophole.

Some commenters argued that a ''sender intent'' standard would be more consistent with Congress's intent than the criteria the Commission proposed.[96] According to these commenters, Congress signaled its intent to focus on the sender's intent rather than the recipient's interpretation by using the term ''purpose'' in the Act. They criticized the Commission's approach as an improper ''effect'' test rather than a ''purpose'' test.[97] As the Commission noted in the NPRM, however, CAN-SPAM refers to the primary purpose of the *message*, not of the sender.[98] The primary purpose of an e-mail message may be fairly determined by looking at the sender's intent or the recipient's interpretation. The latter is the better choice because it is consistent with the Commission's approach to analyzing deception in advertising. The ''recipient's interpretation'' approach also eliminates a vast potential loophole for spammers.

(3) Comments Proposing Substantial Modifications to the Commission's Proposed Criteria for e-mail Messages Containing Both Commercial Content and Transactional or Relationship Content

Many senders of commercial e-mail advocated their own ''primary purpose'' standards for e-mail messages containing both commercial content and transactional or relationship content. Some of these commenters proposed that an e-mail message should have to satisfy *both* of the Commission's criteria for this type of dual-purpose message for the message to be deemed to have a commercial primary purpose.[99] In other

discourage use of these messages. Moreover, despite the concerns of some commenters, CAN-SPAM does *not* give e-mail recipients the right to opt-out of important transactional or relationship content, such as billing statements. *See* AeA; Associations; CBA; DMA; ERA; PMA; Wells Fargo.

[89] *See, e.g.*, Adknowledge; CBA; CIPL; Courthouse; DMA; NAA; NADA; NAEDA; NCL; NetCoalition; Reardon; Reed.

[90] 15 U.S.C. 7702(17)(A)(v). Determining whether a periodical delivered via e-mail will be deemed to be ''transactional or relationship'' under 7702(17)(A)(v), however, requires consideration of the recipient's understanding of what he or she is entitled to receive under the terms of the agreed-to transaction. This is not to say that, at the time of the transaction, the sender must give an exhaustive description of what types of content will be included in a periodical that the recipient has requested to receive. The Commission believes that recipients reasonably expect—without having to be told—that a newsletter will contain advertising along with informational content. Nevertheless, the Commission believes that there are limits to such an expectation. If the content that a recipient has requested pursuant to 7702(17)(A)(v) is overwhelmed by commercial content that clearly exceeds what the recipient might reasonably have expected, then the sender cannot persuasively argue that the primary purpose of its message is to deliver content the recipient is entitled to receive under the terms of a previously agreed to transaction. In such a situation, where excessive commercial content could cause recipients to overlook important transactional or relationship content, it would be contrary to Congress's intent to regulate the e-mail message as transactional or relationship rather than commercial.

[91] If, however, an e-mail message consists exclusively of commercial content (such as a catalog or other content that is purely advertisement or promotion), then the e-mail message would be a single-purpose commercial message. This is because delivery of such advertising or promotional content would not constitute the ''delivery of *goods or services* * * * that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender,'' as set forth in the relevant portion of the definition of ''transactional or relationship message.'' 15 U.S.C. 7702(17)(A)(v) (emphasis added).

[92] *See, e.g.*, AIA; DMA; ERA; Experian; ICC; Mastercard; MBNA; MPA; PMA; Visa; Wells Fargo. As in the first round of comments, many of these commenters argued in favor of a ''but for'' sender-intent standard: a message would not have a commercial primary purpose unless the message would not have been sent but for its commercial content. *See, e.g.*, ERA; MBNA; Mastercard; ACLI; SIA. Under this standard, a message with both transactional or relationship content (*e.g.*, a billing statement) and advertising would never have a commercial primary purpose; according to these commenters, it would always be true that the transactional or relationship portion of the message would have been sent with or without accompanying ads. This standard, in effect, establishes that a message is by definition a transactional or relationship message if it contains *any* transactional or relationship content. The Commission declines to adopt this approach because it is clearly inconsistent with the text of the Act. ABM raised a different concern with the ''but for'' approach: ''[I]f a 'but for' test were applied to the senders of electronic newsletters, who are certainly not intended to fall within the Act's ambit, they could very well fail * * *. Would they distribute these newsletters * * * 'but for' the advertising? In many cases, they would not.'' The final Rule's criteria do not regulate subscription-based newsletters—and most unsolicited *bona fide* newsletters—as commercial messages.

[93] *See* 69 FR at 50098.

[94] *See* ICC; Wells Fargo.

[95] NCL.

[96] *See, e.g.*, MBNA.

[97] *See* Adknowledge; AIA; Associations; CBA; DMA; Experian; MBNA; MPA; NBC; PMA; Time Warner; Wells Fargo.

[98] *See* 69 FR at 50098.

[99] *See* ACB; CBA; ESPC; Experian; Mastercard; MBNA; NBC; Wells Fargo. According to MBNA,

words, this type of dual-purpose message would have a commercial primary purpose only if (1) a recipient reasonably interpreting the subject line would likely conclude that the message contained commercial content, *and* (2) the transactional or relationship content did not appear, in whole or in substantial part, at the beginning of the body of the message.[100] Some advocates of this approach claimed it would be more consistent with Congress's intent than the Commission's approach.[101]

The Commission believes that its criteria better preserve recipients' right to opt out of messages that are ''primarily'' commercial and that they therefore better fulfill Congress's intentions. Under the commenters' approach, if the subject line referred to transactional or relationship content, the e-mail message would always be considered ''transactional or relationship.'' (As noted above, under their approach, both subject line *and* placement criteria must be met before the message would be considered commercial.) Yet, the e-mail message may open with a substantial amount of unsolicited advertising and close with an extremely small amount of transactional or relationship content. Recipients could easily overlook the important transactional or relationship content that is at the end (or buried in the middle) of a long message that contains an overwhelming amount of advertising. Recipients would understandably be frustrated if they did not have the right to opt out of these overwhelmingly commercial messages. e-mail senders could therefore continue to send these messages under the guise of transactional or relationship messages without giving recipients the right to opt out.[102] Because the Commission's approach examines the subject line and placement independently, it treats these messages as ''commercial'' and therefore preserves recipients'' right to opt out of these messages. Therefore, the Commission declines to adopt the commenters' suggested change to the criteria.

Other commenters proposed that the Commission reformulate the ''primary purpose'' criteria as a safe harbor.[103] As described by one of these commenters, ''[f]or e-mail messages containing both commercial and transactional or relationship content there could be a safe harbor whereby the message would be deemed not to have a commercial primary purpose if either: (1) The subject line of the e-mail referred to the transactional or relationship content, or (2) the transactional or relationship content appeared at or near the beginning of the e-mail message. * * * In the event that a marketer opted not to take advantage of the safe harbor, its dual purpose e-mail messages would be viewed on the basis of the net impression of the message as a whole on the reasonable consumer.'' [104]

Under this alternative, as long as the subject line included any reference to transactional or relationship content, a message would not have a commercial primary purpose even if a recipient reasonably interpreting the subject line would likely conclude that the message contained commercial content. A message would not have a commercial primary purpose even if it opened with a block of commercial content and closed with a mere line of transactional or relationship content, provided the subject line referred to transactional or relationship content. These results abandon CAN-SPAM's dual objectives to enable recipients to opt-out of unwanted commercial content and to ensure that recipients receive important transactional or relationship content. The Commission's criteria, on the other hand, protect the opt-out rights that CAN-SPAM created and encourage e-mail senders to present transactional or relationship content with sufficient prominence to ensure that recipients will notice it. At the same time, the Commission's criteria allow e-mail senders, before initiating any message, to determine with a fair level of certainty whether CAN-SPAM will regulate the message as commercial or ''transactional or relationship.'' These senders simply need to satisfy themselves of two things: that a recipient reasonably interpreting the subject line of the message will not likely conclude that the message contains commercial content; and that the transactional or relationship content appears, in whole or in substantial part, at the beginning of the body of the message.

Some commenters suggested determining the primary purpose of messages containing both commercial content and transactional or relationship content by applying a ''net impression'' standard.[105] The Commission believes this is the appropriate standard for e-mail messages containing both commercial content as well as content that is neither commercial nor transactional or relationship. There are material differences between the two types of dual-purpose messages, however, that support applying different criteria to each type. Spammers are notorious for unsolicited messages combining commercial content and content that is neither commercial nor transactional or relationship—nonsensical, random words, quotations, aphorisms, and the like.[106] These messages require a flexible standard, such as the ''net impression'' approach, because a standard focusing only on a recipient's reasonable interpretation of the subject line and the placement of non-commercial content within the body of the message would simply give spammers *carte blanche* to evade CAN-SPAM. e-mail messages with transactional or relationship content, on the other hand, provide content that Congress has identified as important to recipients.[107] The most efficient way to ensure that recipients get this important content is to require that it be placed, in whole or in substantial part, at the beginning of the body of the message. Thus, the Commission declines to adopt criteria that would apply a ''net impression'' test to messages containing both commercial content and transactional or relationship content.

''[t]he net effect * * * would be to shift the presumption from favoring a commercial content finding to one more favorable to a finding of TRM [transactional or relationship message].''

[100] The Commission's approach is that a message has a commercial primary purpose if *either* of the two criteria is met.

[101] *See, e.g.*, CBA; MBNA.

[102] Alternatively, an e-mail message may contain a subject line that refers only to commercial content. If the transactional or relationship content is placed at the beginning of the body of the message, under the commenters' approach, this is a transactional or relationship message, and recipients do not have the right to opt out. However, recipients reading the subject line may expect the message to contain *only* commercial content. They may delete the message without reading it or only casually review the body of the message if they are not expecting anything more than just advertising. Again, they may inadvertently overlook the important transactional or relationship content. If this occurs, recipients may be frustrated by not having an ability to opt out of future similar messages.

[103] *See* Associations; ERA; ITAA; MPA; PMA.

[104] ERA.

[105] *See* DoubleClick; ESPC; NetCoalition; Experian; MPA. Under this approach, an e-mail message has a commercial primary purpose if the net impression created by the message is that it has a commercial primary purpose.

[106] In the NPRM, the Commission labeled these messages ''Shakespearean sonnet'' spam and discussed how its criteria would regulate such messages as ''commercial'' under the Act. *See* 69 FR at 50101.

[107] Moreover, unlike spammers, these senders already have a business relationship with their recipients, so the likelihood of consumer harm is reduced. *See* NPRM, 69 FR at 50096. As a result, an objective test is proper because there is little risk that these senders will abuse it.

3. Section 316.3(a)(3)—Criteria for e-mail Messages That Contain Both Commercial Content and Content That Is Neither Commercial Nor ''Transactional or Relationship''

In addition to the subject line criterion applicable to all dual-purpose messages, discussed above, the NPRM proposed a separate criterion to determine the primary purpose of a message that contains commercial content and content that is neither commercial nor ''transactional or relationship'' in nature. This criterion would come into play for messages with subject lines that likely would not prompt a recipient to conclude that the message advertises or promotes a product or service. In such a case, the primary purpose of the message still would be deemed to be commercial if a recipient reasonably interpreting the *body* of the message would likely conclude that the primary purpose of the message is to advertise or promote a product or service. The proposed Rule listed several factors illustrative of those relevant to this interpretation, including the placement of content that advertises or promotes a product or service at or near the beginning of the body of the message; the proportion of the message dedicated to such content; and how color, graphics, type size, and style are used to highlight commercial content.[108]

The following is an example of how the ''net impression'' criterion for the body of an e-mail message would be applied along with the separate subject line criterion. Consider a newsletter sent to consumers with whom the sender had no previous dealings. Because the newsletter is not sent pursuant to a subscription or similar arrangement whereby the recipient has agreed to receive such content, the message does not constitute transactional or relationship content.[109] Instead, the primary purpose of the message would be determined by considering whether (1) ''a recipient reasonably interpreting the *subject line* of the electronic mail message would likely conclude that the message contains the commercial advertisement or promotion of a commercial product or service,'' or (2) if ''a recipient reasonably interpreting the *body* of the message would likely conclude that the primary purpose of the message is the commercial advertisement or promotion of a commercial product or service.''

Based on the record in this proceeding, the Commission has adopted the proposed Rule provision with minor changes, including substituting, in section 316.3(a)(3)(ii), the phrase ''the commercial advertisement or promotion of a commercial product or service,'' in place of the phrase ''that advertises or promotes a product or service.''[110] Finally, the phrase ''at or near'' in section 316.3(a)(3)(ii) is replaced by the phrase ''in whole or in substantial part at'' to clarify the meaning of the placement factor in the net impression analysis.

A number of commenters responded to proposed section 316.3(a)(3)(ii). The general themes that emerged from the comments are discussed in detail below. A few commenters supported the approach taken in the proposed section 316.3(a)(3)(ii). These commenters acknowledged that it is important that the Rule not permit senders of e-mail messages to evade CAN-SPAM simply by adding ''padding'' to their messages to dilute their commercial nature and thereby escape regulation.[111] AeA noted that its ''member companies generally treat e-mails in this category as 'commercial,' and would follow CAN-SPAM requirements.''[112] Some of these commenters, while generally supportive of the approach taken in the proposal, recommended modification to portions of the net impression component of the test.[113]

The vast majority of commenters who addressed this issue did so with at least some reservations.[114] For example, NFCU endorsed the approach, but recommended eliminating the reference to color, graphics, type size, and style as factors illustrative of those used in evaluating the net impression of a message.[115] Others noted with approval the use of the net impression standard in the proposed Rule, but recommended that the test be revamped to focus on the message as a whole, rather than singling out the subject line for special consideration, and then considering the net impression of the body of the message.[116] As discussed in detail above, the Commission has determined that independent evaluation of the subject line of an e-mail message is appropriate in determining the primary purpose of the message, and has therefore determined to retain this criterion, rather than merely including it as one of the factors to be considered under the net impression analysis.[117]

Other commenters expressed concern that the net impression test was flawed because it depends on the effect of the message on the recipient rather than the intent of the sender.[118] As noted in the NPRM, CAN-SPAM ''refers to the primary purpose of the *message,* not of the sender.''[119] Thus, the Commission is not bound to use a sender intent standard in setting forth criteria by which the primary purpose of an e-mail message is determined. Moreover, as discussed above, any test to determine the intent of a sender would be at least as subjective as the reasonable recipient standard.[120] It also would be contrary to the basic approach underlying consumer protection law, which typically evaluates the impact of marketing and advertising from a reasonable consumer's perspective.[121] Indeed, marketers have long been under an obligation to evaluate their advertising material from the reasonable consumer's perspective and determine what impression the material makes on consumers. The adoption of a reasonable recipient standard in this

[108] Proposed Rule 316(a)(3).

[109] That is, the message is not ''goods or services * * * that the recipient is entitled to receive under the terms of a transaction that the recipient has previously entered into with the sender.'' 15 U.S.C. 7702(17)(A)(v).

[110] As noted, similar modifications have been made in other portions of the Rule that describe ''commercial content.'' Specifically, in the preamble to 316.3(a)(3), the Commission has substituted the phrase ''the commercial advertisement or promotion of a commercial product or service'' for the phrase ''advertises or promotes a product or service,'' and in 316.3(a)(3)(i), the phrase ''message contains the commercial advertisement or promotion of a commercial product or service'' is substituted for the phrase ''advertises or promotes a product or service.''

[111] *See, e.g.*, NFCU: CASRO.

[112] AeA (noting, however, its request that the subject line of an e-mail message not be independently evaluated in determining the primary purpose of the message).

[113] *See, e.g.*, NFCU. (NFCU's concern is addressed below in the section discussing the net impression criteria.)

[114] One commenter urged that an e-mail message containing merely an incidental brand reference in the subject line not be deemed to be commercial. The standard set forth in the final Rule criterion regarding the subject line makes clear that the content of the subject line is evaluated from the perspective of a ''recipient reasonably interpreting the subject line of the electronic mail message'' and turns on whether such a recipient ''would likely conclude that the message contains the commercial advertisement or promotion of a commercial product or service.''

[115] NFCU (expressing concern that these factors were sometimes beyond a sender's control. These arguments are discussed in detail below).

[116] DoubleClick; TrustE; ESPC.

[117] *See* discussion of subject line criterion above; NPRM, 69 FR at 50095.

[118] MBNA.

[119] NPRM, 69 FR at 50098.

[120] *See* discussion above of comments proposing that the primary purpose of an e-mail message be determined by evaluating the sender's intent.

[121] NPRM, 69 FR at 50096–97. *But see* MPAA (expressing the concern that relying on the impression of a reasonable recipient is vague and subjective).

Rule, then, is consistent with Commission precedent.

Some commenters suggested that if the Commission were to retain this standard, that a safe harbor be created as well to protect companies ''that undertake a good-faith effort to comply with the rules * * *[122] ''The Commission declines to include a safe harbor in the final Rule because it is unpersuaded by the record or the circumstances that such a provision is warranted and necessary in this instance. A safe harbor is appropriate to prevent liability from being unfairly applied to an entity, which errs despite its genuine attempts to comply with the provisions of a rule, usually due to circumstances beyond its control, and would be subject to liability for what essentially amounts to a mistake, but for the safe harbor provision.[123] In the view of the Commission, the criteria for determining the primary purpose of an e-mail message are set forth with clarity in the final Rule, thus making it unlikely that a company striving to be in compliance will err in appropriately categorizing the content it sends via e-mail.

Finally, MPA criticized the proposal, opining that it will restrict senders of commercial and ''other'' content from referring to a product or service in the subject line or including third-party advertisements at or near the top of the message or in ''exciting eye catching graphics and text'' if they intend to avoid regulation as commercial messages under the proposed Rule.[124] MPA further criticized reliance on the factors ''irrespective of the overall content of the e-mail when viewed in its totality.'' This reflects a misunderstanding of section 316.3(a)(3)(ii). Indeed, the net impression standard seeks expressly to evaluate the message *in its totality,* looking to the impression the entire e-mail message makes on a reasonable recipient. If a sender prominently places advertising near the top of the body of an e-mail message, and draws attention to this content (over the other content in the message), then the net impression of the e-mail message in its totality may be that the message is commercial. The consequence of this determination is that the message will have to include an opt-out mechanism and otherwise comply with CAN-SPAM. However, nothing would prohibit the sender from formulating the message in a way that has a different result. Although this is necessarily a fact-based analysis, the Commission has derived the net impression standard from its traditional analysis of advertising under the FTC Act,[125] and believes it is one with which advertisers are already familiar and able to comply.

A few comments focused on the specific factors set forth in the proposed Rule as illustrative of those that can be used to determine the net impression of an e-mail message. These factors include the placement of content that advertises or promotes a product or service at or near the beginning of the body of the message; the proportion of the message dedicated to such content; and how color, graphics, type size, and style are used to highlight the commercial content.[126] CASRO endorsed these factors, stating that ''[t]he structure of an e-mail message is the clearest and most direct manifestation of the sender's intent.''[127]

NAR sought clarification of the net impression factor regarding placement of content that advertises or promotes a product or service at or near the beginning of the body of the message, noting that ''it is now commonplace to create an e-mail message that is formatted like a Web page using similar multi-layered commercial and noncommercial text. Sidebars that contain commercial and noncommercial content and span the full length of the e-mail message are regularly used in web-like e-newsletter messages.''[128] Similarly, NRF noted that it is common to place banner advertising lengthwise down one side of a dual purpose e-mail message, and expressed concern about whether the placement of these advertisements ''at or near the top'' of the message would mean that they would be viewed as commercial rather than transactional.[129]

As noted above in the section discussing the placement standard for e-mail messages containing commercial and transactional or relationship content, the Commission wishes to provide the clearest possible standards in the final Rule to facilitate compliance. Thus, in response to the concerns raised by commenters regarding possible confusion over the proposed Rule's ''at or near the top'' placement factor within the net impression analysis, the Commission has modified this language. In the final Rule, the phrase ''at or near the top'' has been replaced by the phrase ''in whole or in substantial part, at * * *.'' In addition, as noted above, the term ''commercial'' has been added as a modifier of the terms ''advertisement or promotion'' and ''product or service,'' to conform the text of the final Rule to that of the Act.

NAR also sought clarification regarding the net impression factor that looks to the proportion of the message dedicated to such content. In its comment, NAR urged the Commission to provide compliance guidance that would elucidate the proportion of an e-mail devoted to commercial advertisement or promotion that would cause an e-mail message to be viewed as commercial. As noted in the NPRM, the Commission rejects a ''rigidly mechanical 'proportion' standard for determining the primary purpose of a message'' because such a standard could easily be evaded by those seeking to avoid regulation under CAN-SPAM.[130] Nonetheless, the Commission believes that the proportion of the message devoted to commercial content versus ''other'' non-commercial, non-transactional or relationship content is a factor relevant to the analysis a reasonable recipient will engage in to determine the primary purpose of a message. The greater the proportion of a message devoted to commercial advertisement or promotion of a commercial product or service, the more likely the balance will tip toward classification of the entire message as commercial.

NAR also requested clarification regarding the extent to which color, graphics, type size, and style will influence the determination that a particular e-mail message is commercial, and whether each would be considered independently or the factors would be considered as a whole.[131] As with the evaluation of advertising claims under FTC jurisprudence, these factors—color, graphics, type size, and style—will be evaluated as part of ''the

[122] Verizon; Keyspan (incorporate sender's intent as a factor in the analysis, as well as adding safe harbor to protect those ''not purposefully or intentionally trying to evade the CAN-SPAM Act.'').

[123] *See, e.g.,* 16 CFR 310.4(b)(3) (do not call safe harbor in Telemarketing Sales Rule) and 16 CFR 310.4(b)(4) (call abandonment safe harbor in Telemarketing Sales Rule).

[124] MPA. *See also* ABM (seeking clarification that ancillary advertising sent along with ''other'' content in an e-mail message will not necessarily make a message commercial).

[125] 69 FR at 50096.

[126] Proposed Rule 316.3(a)(3)(ii).

[127] CASRO (but recommending explicitly adding sender intent as an additional net impression factor to discourage those who might deliberately structure a message to confuse recipients about its purpose, such as advertisements designed to look like surveys).

[128] NAR. *But see* CASRO (supporting the placement factor).

[129] NRF.

[130] NPRM, 69 FR at 50098.

[131] NAR.

entire mosaic, rather than each tile separately.'' [132]

NFCU recommended eliminating this criterion altogether because the formatting of the message text is beyond the sender's control in instances where, for example, an e-mail message sent in HTML format may be converted to plain text by the recipient's e-mail program, altering the sender's original formatting. The comments merely asserted that conversion of an e-mail message by an ISP or a recipient's e-mail program could result in a message that was non-commercial in its HTML form becoming commercial once it is converted to plain text. However, as NCL points out, ''no matter what media they use, marketers spend considerable time and resources trying to anticipate how consumers will react to all aspects of their advertisements, including the placement of information, type size and style, wording, color, graphics, etc.'' [133] Because senders want to effectively communicate their message to recipients, it seems likely that they consider the result if an e-mail message in HTML format is converted to plain text. Moreover, if an e-mail message is sent in HTML format, but then converted to plain text by the recipient's e-mail client, the text will be converted to the default font, color and size set by the client. There is no evidence to support the assertion that this conversion process could result in commercial text being *emphasized.* Thus, the Commission declines to eliminate from the net impression test the factor focusing on whether commercial content is highlighted.

A small number of commenters also addressed the issue of whether the identity of the sender should be considered in determining the primary purpose of an e-mail message. CASRO suggested adding the identity of the sender to the net impression factors in the Rule noting that ''[t]he sender's identity could provide critical information as to the nature of its business or non-commercial activities * * * .'' [134] NCL advocated a different approach: if a message containing commercial and ''other'' content is sent by a for-profit entity, then the message would be automatically deemed commercial, but if it is sent by a not-for-profit, the primary purpose of the message would be determined by the impact of the message on a reasonable recipient.[135] The Commission finds that the comments provide insufficient basis to add an express statement in the final Rule that the identity of the sender will be a factor in the net impression analysis. However, it bears noting that the current factors are illustrative, and that other factors, including the identity of the sender, may be considered in making a determination as to the net impression of an e-mail message.

Finally, some commenters addressed the question of deceptive advertising format. In the NPRM, the Commission noted that it declined to evaluate the status of an e-mail message based solely on the intent of the sender, but highlighted the possibility that sender intent could be useful in ensuring coverage when a sender structures a commercial e-mail message in such a way as to deceive the recipient into believing that a message is non-commercial. NetCoalition strongly objected to the idea that sender's intent could impact on whether an e-mail message is commercial or not, stating ''[s]uch a test is inappropriate, because it undermines the Net Impression test, sows enforcement uncertainty, is unfair to senders by not rewarding senders who have positive intentions when sending messages, and could discourage companies from adopting a robust CAN-SPAM compliance program because of the fear that actions intended to comply with CAN-SPAM could be wrongly construed as 'deliberately structuring.' '' [136] On the other hand, CASRO advocated looking at sender intent in this context, noting that some e-mail senders deliberately structure their messages to appear to be legitimate surveys when, in fact, they are advertising or promoting products or services.[137] After considering the comments, the Commission declines to include sender intent as a component of the net impression analysis because the benefits of including such a provision are outweighed by the risk that such a factor could erroneously cause non-commercial messages to be categorized as commercial. For example, a *bona fide* periodical delivered via e-mail consisting of informational content sponsored by commercial content likely will not have a commercial primary purpose under the final Rule's criteria. If the sender's intent was part of this analysis, however, such a message could be considered to have commercial primary purpose if the sender would not have transmitted the message without the commercial content. In such a situation, the commercial content could be considered essential, and, thus, it may appear that the sender intended the commercial content to be primary.

On the other hand, spammers may try to evade CAN-SPAM by presenting the commercial content of their e-mail messages in the guise of informational content, deliberately structuring their messages to create the mistaken impression in the minds of reasonable recipients that the messages do not have a commercial primary purpose. A spammer might try to argue that, applying the Commission's criteria, CAN-SPAM does not cover such a message, because a recipient reasonably interpreting the message would not likely conclude that the primary purpose of the message is commercial. The Commission believes this strategy may tempt some spammers, although it is unclear whether e-mail messages are as conducive to deceptive format ploys as are other media.[138] In any event, if a sender deliberately structures his message to create a false impression that the message does not have a commercial primary purpose, the message should be considered to have a commercial primary purpose under the final Rule's criteria. In the Commission's view, if a message's entire design is to disguise commercial content as non-commercial content, the message is commercial.[139]

[132] *Cliffdale Assocs.* (Deception Statement), 103 F.T.C. at 181, citing and quoting *FTC* v. *American Home Products,* 695 F.2d 681, 688 (3rd Cir. 1982). Entities subject to the final Rule may also find it useful to review the Commission's Dot Com Disclosure Guide (available online at *http://www.ftc.gov/bcp/conline/pubs/buspubs/dotcom/*) for guidance on the applicability of the Commission's net impression standard to online advertising media.

[133] NCL.

[134] CASRO.

[135] NCL.

[136] NetCoalition.

[137] CASRO.

[138] In other contexts, such as direct mail marketing, the Commission has sued marketers for violating the FTC Act because they disguised their sales pitches as informational content. The Commission recently filed a complaint against A. Glenn Braswell and four of his corporations alleging, among other things, that the defendants used deceptive advertising formats (including advertising material portrayed as an independent health magazine) to market their products. *See FTC* v. *A. Glenn Braswell, et al.,* No. CV 03–3700 DT (PJWx) (C.D. Cal. filed May 27, 2004). For other deceptive format enforcement actions brought by the Commission, *see FTC* v. *Direct Mktg. Concepts, Inc.,* Civ. No. 04–11136–GAO (D. Mass. filed June 1, 2004); *Mega Sys., Int'l., Inc.,* 125 F.T.C. 973 (consent order) C–3811 (June 8, 1998); *Olsen Laboratories, Inc.,* 119 F.T.C. 161 (consent order) C–3556 (Feb. 6, 1995); *Wyatt Mrktg. Corp.,* 118 F.T.C. 86 (consent order) C–3510 (July 27, 1994); *Synchronal Corp.,* 116 F.T.C. 989 (consent order) D–9251 (Oct. 1, 1993); *Nat'l. Media Corp.,* 116 F.T.C. 549 (consent order) C–3441 (June 24, 1993); *CC Pollen Co.,* 116 F.T.C. 206 (consent order) C–3418 (March 16, 1993) (consent order); *Nu-Day Enterprises, Inc.,* 115 F.T.C. 479 (consent order) C–3380 (Apr. 22, 1992); *Twin Star Productions,* 113 F.T.C. 847 (consent order) C–3307 (Oct. 2, 1990) (consent order); *JS&A Group, Inc.,* 111 F.T.C. 522 (consent order) C–3248 (Feb. 24, 1989).

[139] *See* final Rule 316.3(a)(1): ''If an electronic mail message consists exclusively of the commercial advertisement or promotion of a commercial product or service, then the 'primary purpose' of the message shall be deemed to be commercial.''

The Commission will use other tools in its law enforcement arsenal, specifically section 5 of the FTC Act, to combat the practice of using a deceptive advertising format in e-mail.

a. Alternate Approaches Suggested by Commenters

A handful of alternative proposals were suggested by commenters. MBNA suggested framing the test in terms of when messages are non-commercial and non-transactional/relationship rather than in terms of when they are commercial.[140] Specifically, MBNA recommended that the primary purpose of an e-mail message be deemed to be non-commercial if the ''other'' (*i.e.*, non-commercial, non-transactional/relationship) content is referenced in the subject line, and begins to appear at or near the beginning of the message. The test proposed by MBNA includes the inverse of the subject line criterion in the proposed Rule, but eliminates the net impression criterion in favor of a placement standard, such as that used in evaluating e-mail messages containing commercial and transactional or relationship content.

The final Rule determines whether an e-mail message is commercial based on a reasonable recipient's interpretation of the subject line, and, if necessary, the net impression made by the body of the message. Therefore, if the subject line of a dual-purpose message only references the ''other'' content included in the message, then the recipient could not reasonably interpret the subject line as commercial. Rather, a recipient would reasonably view it as ''other.'' Substituting the inverse test proposed by MBNA would not materially modify this analysis, but rather would add a duplicative criterion for determining when a subject line refers to ''other'' content. The Commission declines to add this criterion as it is unnecessary.

The Commission also rejects MBNA's suggestion regarding the use of a ''placement only'' test in lieu of the net impression standard. As discussed above, the placement criterion is used to evaluate dual-purpose e-mail messages that involve commercial content and transactional or relationship content. An objective test that focuses only on placement of the transactional or relationship content at the beginning of the message is proper because Congress identified this content as being important to consumers.[141] Based on the record, the Commission does not believe the placement standard is appropriate for dual-purpose messages that combine commercial content and non-commercial, non-transactional/relationship content. In this context, an objective placement standard would give spammers the ability to easily structure even primarily commercial e-mail messages in a way to evade CAN-SPAM. For example, if the sender placed paragraphs of random words at the beginning of a message, and then followed them with a one-line link to a commercial Web site, under a placement analysis, this message would not be commercial. However, under the more flexible net impression test, a reasonable recipient would likely conclude that the primary purpose of the message is commercial. Therefore, the Commission continues to believe that the net impression standard will be a more effective means of determining the primary purpose of messages that contain commercial and ''other'' content, and therefore, declines to make the suggested modification.

Experian suggested making the test conjunctive by joining the subject line and net impression criteria clauses with an ''and'' rather than an ''or.'' For this type of dual-purpose message to be considered commercial under Experian's proposal, a reasonable recipient would need to interpret the subject line of an e-mail message as demonstrating that a message is commercial *and* conclude that the primary purpose of the body of the message is the commercial advertisement or promotion of a commercial product or service. The Commission declines to frame the test in this way, because it believes that the subject line is of independent importance to recipients as they review the e-mail they receive. As noted in the NPRM, recipients rely upon the content of the subject line in determining whether to open and read a message, or delete it.[142] Therefore, the final Rule retains the two-part test for evaluating the primary purpose of e-mail messages containing both commercial and ''other'' content.

4. Criteria for E-mail Messages Containing Only Transactional or Relationship Content

As discussed in detail above, the proposed Rule included a provision addressing how to determine the primary purpose of an e-mail message that contains only commercial content, as well as provisions dealing with two types of dual purpose messages: (1) Those containing commercial plus transactional or relationship content, and (2) those containing commercial plus ''other,'' non-transactional or relationship content.[143] The proposed Rule, however, did not include a provision addressing how an e-mail message containing only transactional or relationship content would be treated under the Rule.

A small number of commenters raised this omission, and sought clarification regarding the treatment of an e-mail message that contains only transactional or relationship content.[144] In response, the final Rule contains an additional provision that focuses specifically on those e-mail messages that contain only transactional or relationship content. Specifically, section 316.3(b) of the final Rule states:

> In applying the term ''transactional or relationship message'' defined in the CAN-SPAM Act, 15 U.S.C. 7702(17), the ''primary purpose'' of an electronic mail message shall be deemed to be transactional or relationship if the electronic mail message consists exclusively of transactional or relationship content as set forth in paragraph (c) of this section.

By including this provision, the Commission believes at least two purposes are served. First, the mandate of the CAN-SPAM Act is carried out. The Act requires that the Commission set forth regulations defining the criteria by which the primary purpose of an e-mail message may be discerned. This ''primary purpose'' language is found in the Act in both the definition of ''commercial electronic mail message''[145] and the definition of ''transactional or relationship message.''[146] Therefore, for the sake of symmetry, the Commission has included parallel provisions in the final Rule that address both purely commercial and purely transactional or relationship messages.

Secondly, the inclusion of this provision is directly responsive to commenters who expressed concern that, without it, certain transactional messages could be mis-categorized as commercial under the dual purpose test for commercial plus transactional messages.[147] The text of section 316.3(b) of the final Rule clarifies for industry members their obligations when sending messages that contain exclusively content that falls into one or more of the

[140] MBNA.

[141] Because these senders have a business relationship with their recipients, the likelihood of consumer harm is reduced. *See* NPRM, 69 FR at 50096.

[142] NPRM, 69 FR at 50095.

[143] *See* proposed Rule sections 316.3(a)(1) (commercial only); 316.3(a)(2) (commercial plus transactional or relationship) and 316.3(a)(3) (commercial plus ''other,'' non-transactional or relationship).

[144] *See, e.g.*, NetCoalition.

[145] 15 U.S.C. 7702(2).

[146] 15 U.S.C. 7702(17).

[147] *See, e.g.*, NetCoalition; NRF.

transactional or relationship categories set forth in section 316.3(c) of the final Rule. Specifically, such messages are deemed to have a primary purpose that is transactional or relationship and, thus, are subject to only the Act's prohibition against false or misleading transmission information.[148] The Commission believes that this clarification will ease the compliance burden for those senders who transmit exclusively transactional or relationship content, and will better effectuate the mandate of the Act.

Therefore, the final Rule includes section 316.3(b) to ensure that messages containing only transactional or relationship content are categorized as such.

5. Commenters' Constitutional Challenges to the Commission's Criteria Facilitating the Determination of an e-mail Message's Primary Purpose

Commenters' constitutional arguments addressed two primary aspects of CAN-SPAM's regulation of e-mail messages: whether the *Act's regulation* of e-mail is constitutional, and whether the *Commission's criteria* for determining whether the primary purpose of an e-mail message is commercial under CAN-SPAM are constitutional.

a. The Constitutionality of CAN-SPAM

Some commenters claimed that CAN-SPAM cannot withstand First Amendment scrutiny.[149] In *Central Hudson Gas & Elec. Corp.* v. *Pub. Serv. Comm'n of New York,* 447 U.S. 557 (1980), the Supreme Court established the applicable analytical framework for determining the constitutionality of a regulation of commercial speech that is not misleading and does not otherwise involve illegal activity. Under that framework, the regulation: (1) Must serve a substantial governmental interest; (2) must directly advance this interest; and (3) is not more extensive than necessary to serve the government's interests[150]—that is, there must be ''a 'fit' between the legislative ends and the means chosen to accomplish those ends * * * a fit that is not necessarily perfect, but reasonable * * * that employs not necessarily the least restrictive means but * * * a means narrowly tailored to achieve the desired objective.''[151] Three commenters argued that CAN-SPAM fails to satisfy any part of this test.[152] These commenters, and others, argued that CAN-SPAM must meet the ''strict scrutiny'' First Amendment standard.[153] According to NAA, under that standard, a regulation must identify a compelling government interest and must be the least restrictive means of satisfying that interest.

CAN-SPAM regulates commercial e-mail messages, and it does not regulate non-commercial e-mail.[154] The proper standard to assess the Act's regulation of e-mail, therefore, is *Central Hudson*'s test, not strict scrutiny. CAN-SPAM's regulation of commercial e-mail messages clearly satisfies the *Central Hudson* test. First, as explained in section 7701 of the Act, CAN-SPAM addresses two substantial government interests that the Supreme Court has recognized: it protects individuals' privacy,[155] and it protects individuals from fraudulent and deceptive marketing.[156] In addition, CAN-SPAM advances another interest specifically articulated by Congress: it promotes the effectiveness of e-mail as a valuable means of communication.[157] No commenter argued that these are not substantial government interests.

Second, CAN-SPAM directly advances these substantial government interests. CAN-SPAM protects consumers' privacy by allowing individual e-mail recipients to choose whether to opt-out of receiving additional commercial e-mail messages from any particular sender and by requiring commercial e-mail messages to clearly and conspicuously disclose the opt-out mechanism. CAN-SPAM protects consumers from fraudulent or deceptive e-mail marketing by prohibiting false, misleading, or deceptive transmission or subject line information. In addition, CAN-SPAM advances the governmental interest in promoting e-mail as a communication tool by allowing individual recipients to opt-out of future unwanted commercial messages, thus reducing the likelihood that wanted electronic mail messages ''will be lost, overlooked, or discarded amidst the larger volume of unwanted messages.''[158]

Third, CAN-SPAM is not more extensive than necessary to serve the government's interests.[159] ''The Government is not required to employ the least restrictive means conceivable, but it must demonstrate narrow tailoring of the challenged regulation to the asserted interest—'a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served.' '' [160] The Act protects consumers' privacy by giving e-mail recipients the chance to opt-out of future commercial e-mail messages from a particular sender; CAN-SPAM does not give this control to the government, and it does not prohibit any marketer from sending a commercial e-mail message to any recipient until a recipient submits an opt-out request. CAN-SPAM protects consumers from fraud and deception by prohibiting misleading transmission information and subject lines, and by requiring disclosure that the message is an advertisement and disclosure of the sender's address. CAN-SPAM promotes e-mail as a communications tool by allowing recipients to stop unwanted commercial messages one sender at a time. No commenter argued that the fit between these measures and these interests is unreasonable. Thus, CAN-SPAM's regulation of commercial e-mail

[148] *See* 15 U.S.C. 7704(a)(1), which applies equally to ''commercial electronic mail messages'' and ''transactional or relationship messages.'' The Act's other requirements and prohibitions are targeted at ''commercial electronic mail messages.''

[149] *See* EFF; MPA; MPAA; NAA; PMA.

[150] *Central Hudson,* 447 U.S. at 566.

[151] *Bd. of Trs. of State Univ. of N.Y.* v. *Fox,* 492 U.S. 469, 480 (1989).

[152] *See* MPA; MPAA; NAA.

[153] *See* EFF; MPA; MPAA; NAA; PMA.

[154] 15 U.S.C. 7701(b).

[155] *See Rowan* v. *Post Office Dept.,* 397 U.S. 728 (1970) (The government has a substantial interest in protecting the privacy of individuals in their homes.); *Frisby* v. *Schultz,* 487 U.S. 474, 485 (1988) (''Individuals are not required to welcome unwanted speech into their own homes and the government may protect this freedom.''); *see also Mainstream Mktg. Servs.* v. *FTC,* 358 F.3d 1228 (10th Cir. 2004) (holding that protecting the privacy of individuals in their homes and protecting consumers against the risk of fraudulent and abusive solicitation are ''undisputedly substantial government interests'').

[156] *See Watchtower Bible and Tract Soc'y* v. *Village of Stratton,* 536 U.S. 150 (2002) (noting that precedents establish that prevention of fraud, prevention of crime, and protection of residents' privacy are important interests that the government may seek to safeguard through some form of regulation); *Schaumburg* v. *Citizens for Better Env't.,* 444 U.S. 620, 637 (1980) (protecting the public from fraud, crime, and undue annoyance are indeed substantial); *see also Mainstream,* 358 F.3d 1228.

[157] Section 7701(a) (1) and (2) of CAN-SPAM states: ''Electronic mail has become an extremely important and popular means of communication, relied on by millions of Americans on a daily basis for personal and commercial purposes. Its low cost and global reach make it extremely convenient and efficient, and offer unique opportunities for the development and growth of frictionless commerce. The convenience and efficiency of electronic mail are threatened by the extremely rapid growth in the volume of unsolicited commercial electronic mail. Unsolicited commercial electronic mail is currently estimated to account for over half of all electronic mail traffic, up from an estimated 7 percent in 2001, and the volume continues to rise. Most of these messages are fraudulent or deceptive in one or more respects.'' 15 U.S.C. 7701(a)(1) and (2).

[158] 15 U.S.C. 7701(a)(4).

[159] *See Central Hudson,* 447 U.S. at 566.

[160] *Greater New Orleans Broadcasting Assoc., Inc.* v. *United States,* 527 U.S. 173, 188 (1999) (quoting *Bd. of Trs. of State Univ. of N.Y.,* 492 U.S. at 480).

messages satisfies *Central Hudson*'s test for regulations addressing commercial speech.

b. The Constitutionality of the Commission's Criteria

Commenters responding to the Commission's proposed criteria in the NPRM also argued that the Commission's criteria—as opposed to the Act itself—were unconstitutional.[161] These commenters claimed that the criteria would improperly subject non-commercial speech within e-mail messages to CAN-SPAM's regulation of commercial e-mail messages. These commenters—mostly representing periodical publishers—typically requested a blanket exemption from CAN-SPAM for all *bona fide* newsletters and other periodicals delivered via e-mail.[162] The Commission believes that the final Rule's criteria facilitating the determination of an e-mail message's primary purpose likely serve to exclude *bona fide* newsletters and other such publications from regulation as commercial e-mail messages. Therefore, the Commission declines to create a special blanket exemption for any particular group of e-mail messages.

The Supreme Court has articulated its understanding of what constitutes commercial speech in various ways in various decisions. For example, the speech at issue in *Bolger* v. *Youngs Drug Products Corp.*,[163] was deemed commercial where the speech was conceded to be an advertisement, the speech referred to a particular product, and the speaker had an economic motive. In *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*,[164] the speech at issue was deemed commercial because it did no more than propose a commercial transaction. The Commission believes that the concept embodied in section 7702(2) of CAN-SPAM and incorporated in the final Rule's ''primary purpose'' provisions is consistent with the general principles underlying these precedents. At any rate, the Commission wishes to emphasize in the strongest possible terms that it does not intend for the criteria it is adopting to result in the regulation of non-commercial speech as commercial e-mail under the CAN-SPAM regulatory scheme. To make this intention as express and as clear as possible, the Commission has added the following as footnote 1 in section 316.3(a) of the final Rule: ''The Commission does not intend for these criteria to treat as a 'commercial electronic mail message' anything that is not commercial speech.'' The Commission intends that the rules it adopts under CAN-SPAM be consistent both with Congress's intent regarding the scope of the Act, and with applicable First Amendment decisions.[165]

As it developed its ''primary purpose'' criteria, the Commission was mindful of judicial holdings governing the regulation of periodicals. As set forth above,[166] one criterion for assessing messages containing both commercial content and content that is neither commercial nor transactional or relationship (*e.g.*, unsolicited periodicals) is whether a recipient reasonably interpreting the message would likely conclude that the message's primary purpose is commercial. That standard must be evaluated against relevant precedent. Two cases cited by commenters offer useful guidance.[167] In *Hays County Guardian* v. *Supple*,[168] the court held that a newspaper was not commercial speech even when it included advertising matter because it also contained matters of highest public concern. In *Ad World, Inc.* v. *Township of Doylestown*,[169] the court held that the line between commercial and non-commercial speech for First Amendment purposes cannot be drawn by some magic ratio of editorial to advertising content. The Commission does not intend for its ''net impression'' standard for determining the primary purpose of e-mail messages containing both commercial content and content that is neither commercial nor transactional or relationship to treat *bona fide* newsletters and other periodicals as commercial e-mail messages. On the other hand, the Commission cannot, as some commenters insisted, grant a blanket exemption to all messages that are ''*bona fide* newsletters.'' As the Commission noted in the NPRM, one of its concerns in this proceeding has been that ''spammers not be able to structure their messages to evade CAN-SPAM by placing them outside the technical definition of 'commercial electronic mail message.' A typical example is a hypothetical message, unrequested by the recipient, that begins with a Shakespearean sonnet (or paragraphs of random words) and concludes with a one-line link to commercial Web site.'' [170] As the Commission noted, a recipient of such a message could reasonably conclude that the message's primary purpose is commercial.[171]

Commenters advocating a *bona fide* newsletter exemption offered no adequate explanation of how such an exemption could be limited. Most importantly, they failed to explain how CAN-SPAM could continue to treat as ''commercial'' the ''Shakespearean sonnet'' spam (unsolicited messages coupling informational content—such as a Shakespearean sonnet, aphorisms, or random words and phrases—with a sales pitch). To preserve the protections against unwanted commercial speech that CAN-SPAM grants, the Commission has determined to subject all messages containing commercial content and content that is neither commercial nor transactional or relationship to the same standard.

D. Section 316.4—Sexually Explicit Labeling Rule

This provision of the final Rule is retained from the proposed Rule. Section 316.4 of the proposed Rule included the Sexually Explicit Labeling Rule. In the August 13, 2004, NPRM, the only change proposed to the Sexually Explicit Labeling Rule was to renumber it as section 316.4. The Sexually Explicit Labeling rule was originally numbered section 316.1 when it was promulgated on April 19, 2004. The Commission requested comment on this proposed change and did not receive any responsive comments.

E. Section 316.5—Severability

This provision of the final Rule is retained from the proposed Rule. The Commission did not receive any comment on this provision in response to the NPRM. This provision, which is identical to the analogous provision included in the Sexually Explicit Labeling Rule, provides that if any portion of the final Rule is found invalid, the remaining portions will

[161] *See* Courthouse; EFF; MPAA; NAA.

[162] *See* Courthouse; MPA; NAA.

[163] 463 U.S. 60 (1983).

[164] 425 U.S. 748 (1976).

[165] There are several statements in the legislative history expressing the intentions of members of Congress that CAN-SPAM not encroach on transactional or relationship e-mail communications, or on fully-protected non-commercial speech. For example, Senator Wyden expressed his intent that CAN-SPAM not interfere ''with a company's ability to use e-mail to inform customers of warranty information, provide account holders with monthly account statements, and so forth.'' 149 Cong. Rec. S5208 (Apr. 10, 2003). Similarly, Representative Sensenbrenner stated that ''the legislation concerns only commercial and sexually explicit e-mail and is not intended to intrude on the burgeoning use of e-mail to communicate for political, news, personal and charitable purposes.'' 149 Cong. Rec. H12193 (Nov. 21, 2003).

[166] Part II C 3 of this Statement of Basis and Purpose.

[167] *See* MPA; NAA.

[168] 969 F.2d 111 (5th Cir. 1992).

[169] 672 F.2d 1136 (3rd Cir. 1982).

[170] 69 FR at 50101 (Aug. 13, 2004).

[171] *Id.*

survive. This provision pertains to the entirety of the final Rule.

III. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506 (''PRA''), the Commission reviewed the proposed and final Rule. The Rule does not impose any recordkeeping, reporting, or disclosure requirements, nor does it otherwise constitute a ''collection of information'' as defined in the regulations implementing the PRA.[172]

IV. Regulatory Flexibility Act

The NPRM included an initial regulatory flexibility analysis (''IRFA'') under the Regulatory Flexibility Act (''RFA''),[173] even though the Commission did not expect that the proposed Rule would have a significant economic impact on a substantial number of small entities. In addition, the Commission invited public comment on the proposed Rule's effect on small entities to ensure that no significant impact would be overlooked.[174]

This Final Regulatory Flexibility Analysis (''FRFA'') incorporates the Commission's initial findings, as set forth in the August 13, 2004, NPRM; addresses the comments submitted in response to the IRFA notice; and describes the steps the Commission has taken in the final Rule to minimize its impact on small entities consistent with the objectives of the CAN-SPAM Act.

A. Succinct Statement of the Need for, and Objectives of, the Final Rule

The final Rule was created pursuant to the requirement imposed by the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (''CAN-SPAM'' or ''the Act'') that the Commission, not later than 12 months after December 16, 2003, ''issue regulations pursuant to section 7711 [of the Act] defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.''

B. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

In the IRFA, the Commission sought comment regarding the impact of the proposed Rule and any alternatives the Commission should consider, with a specific focus on the effect of the Rule on small entities. The public comments on the proposed Rule are discussed above throughout the Statement of Basis and Purpose, as are the minor changes that have been made in the final Rule. After reviewing the comments, including the very small number that specifically addressed the impact of the Rule on small entities, the Commission does not believe that the final Rule will unduly burden the entities who send commercial electronic mail messages or transactional or relationship mail messages.[175]

C. Explanation as to Why No Estimate Is Available Regarding the Number of Small Entities to Which the Final Rule Will Apply

Determining a precise estimate of the number of small entities subject to the proposed Rule, or describing those entities, is not readily feasible for two reasons. First, there is insufficient publicly available data to determine the number and type of small entities currently using e-mail in any commercial setting. As noted in the IRFA, the Rule will apply to '' 'senders' of 'commercial electronic mail messages,' and, to a lesser extent, to 'senders' of 'transactional or relationship messages.' ''[176] Thus, regardless of size, any entity that sends commercial e-mail messages containing the commercial advertisement or promotion of a commercial product or service,[177] or transactional or relationship messages meeting one of the specific categories set forth in the Rule for e-mail messages sent to recipients with whom a sender has a prior relationship,[178] will be subject to the Rule. In the IRFA, the Commission set forth the few sources of data publicly available to approximate the number of entities that send commercial e-mail messages or transactional or relationship messages, noting that ''[g]iven the paucity of data concerning the number of small businesses that send commercial e-mail messages or transactional or relationship messages, it is not possible to determine precisely how many small businesses would be subject to the proposed Rule.''[179] None of the comments provided information regarding the number of entities of any size that will be subject to the Rule.

The second reason that determining a precise estimate of the number of small entities subject to the proposed Rule is not readily feasible is that the assessment of whether the primary purpose of an e-mail message is ''commercial,'' ''transactional or relationship,'' or ''other'' turns on a number of factors that will require factual analysis on a case-by-case basis. Thus, even if the number of entities who use e-mail in commercial dealings were known, the extent to which the messages they send will be regulated by the Rule depends upon the primary purpose of such messages, a determination which cannot be made absent factual analysis.

D. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements of the Final Rule and the Type of Professional Skills That Will Be Necessary To Implement the Final Rule

The final Rule sets forth the criteria for determining the primary purpose of a commercial e-mail message and, thus, does not itself impose any reporting, recordkeeping, or other compliance requirements within the meaning of the Paperwork Reduction Act. Indeed, because the final Rule imposes no substantive requirements, it is unlikely to impose any costs whatsoever. Any costs attributable to CAN-SPAM are the result of the substantive requirements of the Act itself—such as the requirement that commercial e-mail messages include an opt-out mechanism and certain disclosures—not the Commission's interpretive final Rule. While one commenter expressed concerns about the additional costs that may be associated with implementing the requirements of the Rule,[180] the commenter did not provide specific justification or data to support such a concern. Thus, the Commission continues to believe that the requirements of the Rule will not create a significant burden on persons or entities, including small entities, who initiate commercial e-mail messages or transactional or relationship messages.

[172] *See* 5 CFR 1320.3(c).

[173] 5 U.S.C. 601–612.

[174] NPRM, 69 FR at 50103–04.

[175] The Commission received only a half-dozen comments responding to the questions posed in the proposed Rule regarding the impact of the Rule on small entities. See ACLI; Schwartz; State Farm; Adknowledge; Mattathil. The thrust of the comments is that the Commission should take care not to impose burdens on legitimate sellers, but rather should focus on reining in senders of bulk unsolicited e-mail messages. None addressed with specificity the harms that would accrue from the Commission's proposed criteria for determining the primary purpose of a commercial e-mail message.

[176] NPRM, 69 FR at 50103 (explaining that the CAN-SPAM Act's structure and definitions were imported into the proposed Rule.)

[177] Final Rule, 316.2(c) (definition of ''commercial electronic mail message'') and 316.3 (setting forth the criteria by which the primary purpose of an e-mail message is determined).

[178] Final Rule, 316.2(n) (definition of ''transactional or relationship message'') and 316.3 (setting forth the criteria by which the primary purpose of an e-mail message is determined).

[179] NPRM, 69 FR at 50104.

[180] Schwartz.

The Rule sets forth criteria by which the primary purpose of an e-mail message is determined. The Commission has not received any comments that necessitate modifying its previous views of projected compliance requirements or costs.

E. Discussion of Significant Alternatives the Commission Considered That Would Accomplish the Stated Objectives of the CAN-SPAM Act and That Would Minimize Any Significant Economic Impact of the Final Rule on Small Entities

Through the NPRM, the Commission sought to gather information regarding the economic impact of CAN-SPAM's requirements on all businesses, including small entities. The Commission requested public comment on whether the proposed Rule would unduly burden either entities who use e-mail to send messages defined as ''commercial'' or ''transactional or relationship'' messages under the Act and the FTC's CAN-SPAM Rule; whether this burden is justified by offsetting benefits to consumers; what effect the Rule will have on small entities that initiate messages the primary purpose of which is commercial or transactional or relationship; what costs will be incurred by small entities to ''implement and comply'' with the Rule; and whether there are ways the Rule could be modified to reduce the costs or burdens for small entities while still being consistent with the requirements of the Act.[181] This information was requested by the Commission in an attempt to minimize the final Rule's burden on all businesses, including small entities.

As explained earlier in the statement of basis and purpose, the Commission has considered the comments and alternatives proposed by such commenters, and continues to believe that the final Rule will not create a significant economic impact on small entities or others who send or initiate commercial e-mail messages or transactional or relationship messages. The criteria adopted in the final Rule for determining the primary purpose of a commercial e-mail message reflect the Act's express requirements, which the Commission has no authority to waive, as well as its determination that these criteria entail a reasonable and relatively minimal compliance burden, when balanced against the offsetting benefit of allowing e-mail recipients to choose to limit further unwanted commercial electronic mail messages from particular senders. The Commission has not received any comments that lead it to believe that the final Rule will unduly burden either the entities who sell, or those consumers who purchase, commercial products and services through e-mail messages.

[181] NPRM, 69 FR at 50103–50105.

List of Subjects in 16 CFR Part 316

Advertising, Business and industry, Computer technology, Consumer protection, Labeling.

■ Accordingly, for the reasons set forth in the preamble above, the Commission amends title 16, Chapter I, Code of Federal Regulations, by revising part 316 to read as follows:

PART 316—RULES IMPLEMENTING THE CAN-SPAM ACT OF 2003

Sec.
316.1 Scope.
316.2 Definitions.
316.3 Primary purpose.
316.4 Requirement to place warning labels on commercial electronic mail that contains sexually oriented material.
316.5 Severability.

Authority: 15 U.S.C. 7701–7713.

§ 316.1 Scope.

This part implements the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (''CAN-SPAM Act''), 15 U.S.C. 7701–7713.

§ 316.2 Definitions.

(a) The definition of the term ''affirmative consent'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(1).

(b) ''Character'' means an element of the American Standard Code for Information Interchange (''ASCII'') character set.

(c) The definition of the term ''commercial electronic mail message'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(2).

(d) The definition of the term ''electronic mail address'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(5).

(e) The definition of the term ''electronic mail message'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(6).

(f) The definition of the term ''initiate'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(9).

(g) The definition of the term ''Internet'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(10).

(h) The definition of the term ''procure'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(12).

(i) The definition of the term ''protected computer'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(13).

(j) The definition of the term ''recipient'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(14).

(k) The definition of the term ''routine conveyance'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(15).

(l) The definition of the term ''sender'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(16).

(m) The definition of the term ''sexually oriented material'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7704(d)(4).

(n) The definition of the term ''transactional or relationship message'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(17).

§ 316.3 Primary purpose.

(a) In applying the term ''commercial electronic mail message'' defined in the CAN-SPAM Act, 15 U.S.C. 7702(2), the ''primary purpose'' of an electronic mail message shall be deemed to be commercial based on the criteria in paragraphs (a)(1) through (a)(3) and (b) of this section: [1]

(1) If an electronic mail message consists exclusively of the commercial advertisement or promotion of a commercial product or service, then the ''primary purpose'' of the message shall be deemed to be commercial.

(2) If an electronic mail message contains both the commercial advertisement or promotion of a commercial product or service as well as transactional or relationship content as set forth in paragraph (c) of this section, then the ''primary purpose'' of the message shall be deemed to be commercial if:

(i) A recipient reasonably interpreting the subject line of the electronic mail message would likely conclude that the message contains the commercial advertisement or promotion of a commercial product or service; or

(ii) The electronic mail message's transactional or relationship content as set forth in paragraph (c) of this section does *not* appear, in whole or in substantial part, at the beginning of the body of the message.

(3) If an electronic mail message contains both the commercial

[1] The Commission does not intend for these criteria to treat as a ''commercial electronic mail message'' anything that is not commercial speech.

advertisement or promotion of a commercial product or service as well as other content that is not transactional or relationship content as set forth in paragraph (c) of this section, then the ''primary purpose'' of the message shall be deemed to be commercial if:

(i) A recipient reasonably interpreting the subject line of the electronic mail message would likely conclude that the message contains the commercial advertisement or promotion of a commercial product or service; or

(ii) A recipient reasonably interpreting the body of the message would likely conclude that the primary purpose of the message is the commercial advertisement or promotion of a commercial product or service. Factors illustrative of those relevant to this interpretation include the placement of content that is the commercial advertisement or promotion of a commercial product or service, in whole or in substantial part, at the beginning of the body of the message; the proportion of the message dedicated to such content; and how color, graphics, type size, and style are used to highlight commercial content.

(b) In applying the term ''transactional or relationship message'' defined in the CAN-SPAM Act, 15 U.S.C. 7702(17), the ''primary purpose'' of an electronic mail message shall be deemed to be transactional or relationship if the electronic mail message consists exclusively of transactional or relationship content as set forth in paragraph (c) of this section.

(c) Transactional or relationship content of e-mail messages under the CAN-SPAM Act is content:

(1) To facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

(2) To provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

(3) With respect to a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender, to provide—

(i) Notification concerning a change in the terms or features;

(ii) Notification of a change in the recipient's standing or status; or

(iii) At regular periodic intervals, account balance information or other type of account statement;

(4) To provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or

(5) To deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

§ 316.4 Requirement to place warning labels on commercial electronic mail that contains sexually oriented material.

(a) Any person who initiates, to a protected computer, the transmission of a commercial electronic mail message that includes sexually oriented material must:

(1) Exclude sexually oriented materials from the subject heading for the electronic mail message and include in the subject heading the phrase ''SEXUALLY–EXPLICIT:'' in capital letters as the first nineteen (19) characters at the beginning of the subject line; [2]

(2) Provide that the content of the message that is initially viewable by the recipient, when the message is opened by any recipient and absent any further actions by the recipient, include only the following information:

(i) The phrase ''SEXUALLY–EXPLICIT:'' in a clear and conspicuous manner; [3]

(ii) Clear and conspicuous identification that the message is an advertisement or solicitation;

(iii) Clear and conspicuous notice of the opportunity of a recipient to decline to receive further commercial electronic mail messages from the sender;

(iv) A functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—

(A) A recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(B) Remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message;

(v) Clear and conspicuous display of a valid physical postal address of the sender; and

(vi) Any needed instructions on how to access, or activate a mechanism to access, the sexually oriented material, preceded by a clear and conspicuous statement that to avoid viewing the sexually oriented material, a recipient should delete the e-mail message without following such instructions.

(b) *Prior affirmative consent.* Paragraph (a) of this section does not apply to the transmission of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

§ 316.5 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission, Commissioner Leibowitz not participating.

Donald S. Clark,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

List of Commenters and Acronyms—August 13, 2004 CAN-SPAM NPRM

AAM—American Association of Museums
AAMFT—American Association for Marriage and Family Therapy
ABM—American Business Media
ACA—ACA International
ACB—America's Community Bankers
ACLI—American Council of Life Insurers
Adknowledge—Adknowledge, Inc.
Administrative—Administrative Systems, Inc.
AE—Association Enterprise, Inc.
AeA—AEA—American Electronics Association
AFP—Association of Fundraising Professionals
AGSES—Association of Girl Scout Executives Staff
AHQI—Association Headquarters, Inc.
AIA—American Insurance Association
Almeida—Almeida, E
AMP—AMP Management Services
AMR—AMR
AMS—Alternative Management Solutions, Inc.
Amri—Amri, Joyce
Anast—Anast, Dave
AMGR—Association Management Resources
ASAE—American Society of Association Executives
ASM—Association & Society Management, Inc.
ASMI—Association and Society Management International, Inc.
Assoc-SG—Association Services Group
Assoc-Mgmt—Association Management Specialists
Associations—Group of Associations
Bahn—Bahn, William
Baker—Baker & Hostetler LLP
BofA—Bank of America Corporation
Beneteau—Beneteau, Rick
Bihl—Bihl, Thomas

[2] The phrase ''SEXUALLY–EXPLICIT'' comprises 17 characters, including the dash between the two words. The colon (:) and the space following the phrase are the 18th and 19th characters.

[3] This phrase consists of nineteen (19) characters and is identical to the phrase required in section 316.4(a)(1).

Blake—Blake, Tammy
BLF—BLF Management
BMI—Broadcast Music, Inc.
Boock—Boock, Jeff
Brenner—Brenner, Mary Jane
Bronkema—Bronkema, Dawn
Cantrall—Cantrall & Associates
Cap—Cap, Eric
CASRO—Council of American Survey Research Organizations
CBA—Consumer Bankers Association
CIPL—Center For Information Policy Leadership
Clarion—Management Clarion Resources
Cleaver—Cleaver, Jack
CMOR—Council for Marketing and Opinion Research
Colman—Colman, Heather
Comerica—Comerica Incorporated
Cook—Cook, Jim
Courthouse—Courthouse News Service
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[FR Doc. 05–974 Filed 1–18–05; 8:45 am]

BILLING CODE 6750–01–P

Federal Register

Wednesday,
January 19, 2005

Part III

General Services Administration

41 CFR Parts 101–11 and 102–195

Federal Management Regulation; Interagency Reports Management Program; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–11 and 102–195

[FMR Amendment 2005–02; FMR Case 2004–102–6]

RIN 3090–AI01

Federal Management Regulation; Interagency Reports Management Program

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the Federal Management Regulation (FMR) to delete the specific requirements of the Interagency Reports Management Program.

DATES: *Effective Date:* January 19, 2005.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Mr. David Pritzker, Regulatory Information Service Center (MI), at (202) 482–7340. Please cite FMR Amendment 2005–02, FMR case 2004–102–6.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule deletes from the Federal Management Regulation (FMR) the specific requirements of the Interagency Reports Management Program. GSA has determined that these requirements no longer serve a useful purpose, in view of the evolution of Federal records management practices affecting records creation and Federal policies that encourage agencies to share information electronically, when authorized by law and regulation, particularly as an alternative to collecting additional information from the public. This action is being published as a final rule because it applies only to agency management and, therefore, is not required to be published in the **Federal Register** for notice and comment.

For more than 30 years, GSA has had an Interagency Reports Management Program, which has governed reporting requirements imposed by a Federal agency on one or more other Federal agencies. Regulations of this program were part of a centralized implementation of Governmentwide reports management policies and guidelines specifically intended to ensure that interagency reports were cost-effective, non-duplicative, and complied with applicable information laws and regulations. The GSA regulations adopted in 1973 were amended several times but remained substantially similar in content until September 2001. They provided for a system of oversight and approval that included a procedure for advance approval by GSA of proposed interagency reporting requirements, assignment of GSA control numbers and expiration dates, and maintenance of an inventory of approved interagency reporting requirements. Agencies were asked to refrain from responding to non-approved reporting requirements and to inform GSA of any such requests.

In September 2001, GSA substantially revised its regulations for the Interagency Reports Management Program, eliminating the requirement for agencies to obtain GSA's approval before initiating an interagency report (66 FR 48357, September 20, 2001). GSA noted that this change would shorten the time between when an agency determines a need for interagency information and when the agency could initiate an interagency report to obtain that information. The change was intended to let agencies take advantage of information technology to get the information they need to accomplish their missions. However, the revised regulations (41 CFR Part 102–195) still require agencies to do an annual review of the reporting requirements they impose on other agencies to assure that they remain necessary, and to submit certain data to GSA and other agencies, if requested. The 2001 rules also require agencies to notify GSA when a report is no longer needed and to submit to GSA every three years cost information and other details about all reporting requirements they impose upon other agencies for which responding agencies as a whole would need more than 100 hours to comply.

The current GSA regulations on interagency reporting requirements have their roots in an era when almost all such reporting was done on paper and was relatively labor-intensive. They were originally adopted under a directive of the Office of Management and Budget that was eliminated in 1995 as ''no longer pertinent'' (see 60 FR 30444, June 8, 1995). With the development of electronic information technology and the shifting of focus to emphasize electronic information sharing among agencies, retention of even the reduced requirements of the 2001 rules places an unnecessary burden on agencies that seems to have minimal benefit, if any.

B. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

C. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to internal management and will not have a significant impact on the public.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management.

List of Subjects in 41 CFR Parts 101–11 and 102–195

Archives and records, Computer technology, Government property management.

Dated: December 21, 2004.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, GSA amends 41 CFR parts 101–11 and 102–195 as set forth below:

■ 1. The authority citation for 41 CFR parts 101–11 and 102–195 continues to read as follows:

Authority: 40 U.S.C. 486(c).

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

PART 101–11—FEDERAL RECORDS AND STANDARD AND OPTIONAL FORMS

■ 2. Amend part 101–11 by revising the part heading to read as set forth above.

■ 3. Revise section 101–11.0 to read as follows:

§ 101–11.0 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 1 through 220).

For information on records and standard and optional forms, see FMR parts 102–193 and 102–194 (41 CFR parts 102–193 and 102–194).

CHAPTER 102—FEDERAL MANAGEMENT REGULATION

PART 102–195 [REMOVED AND RESERVED]

■ 4. Remove and reserve part 102–195.

[FR Doc. 05–1001 Filed 1–18–05; 8:45 am]

BILLING CODE 6820–27–S

Federal Register

Wednesday,
January 19, 2005

Part IV

The President

Executive Order 13370—Providing an Order of Succession in the Office of Management and Budget

Federal Register
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Wednesday, January 19, 2005

Presidential Documents

Title 3—

The President

Executive Order 13370 of January 13, 2005

Providing an Order of Succession in the Office of Management and Budget

By the authority vested in me as President by the Constitution and the laws of the United States of America and pursuant to the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

Section 1. During any period when the Director of the Office of Management and Budget (Director) and the Deputy Director of the Office of Management and Budget (Deputy Director) have died, resigned, or otherwise become unable to perform the functions and duties of the office of Director, the following officers of the Office of Management and Budget, in the order listed, shall perform the functions and duties of the office of Director, if they are eligible to act as Director under the provisions of the Federal Vacancies Reform Act of 1998, until such time as at least one of the officers mentioned above is able to perform the functions and duties of the office of Director:

Deputy Director for Management;

Executive Associate Director;

Associate Director (National Security Programs);

Associate Director (General Government Programs);

Associate Director (Human Resource Programs);

Associate Director (Natural Resource Programs);

General Counsel;

Administrator for Federal Procurement Policy;

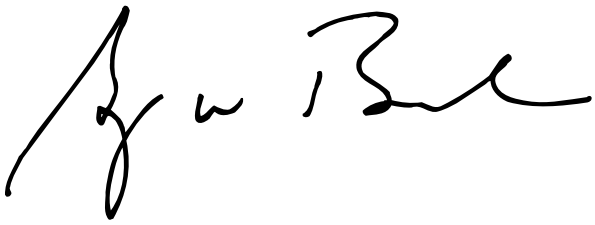
Administrator of the Office of Information and Regulatory Affairs;

Controller, Office of Federal Financial Management; and

Administrator of the Office of Electronic Government.

Sec. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Director pursuant to this order.

(b) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Director.



THE WHITE HOUSE,
January 13, 2005.

[FR Doc. 05–1170
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This is the first in a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

A cumulative List of Public Laws for the second session of the 108th Congress will appear in the issue of January 31, 2005.

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.

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